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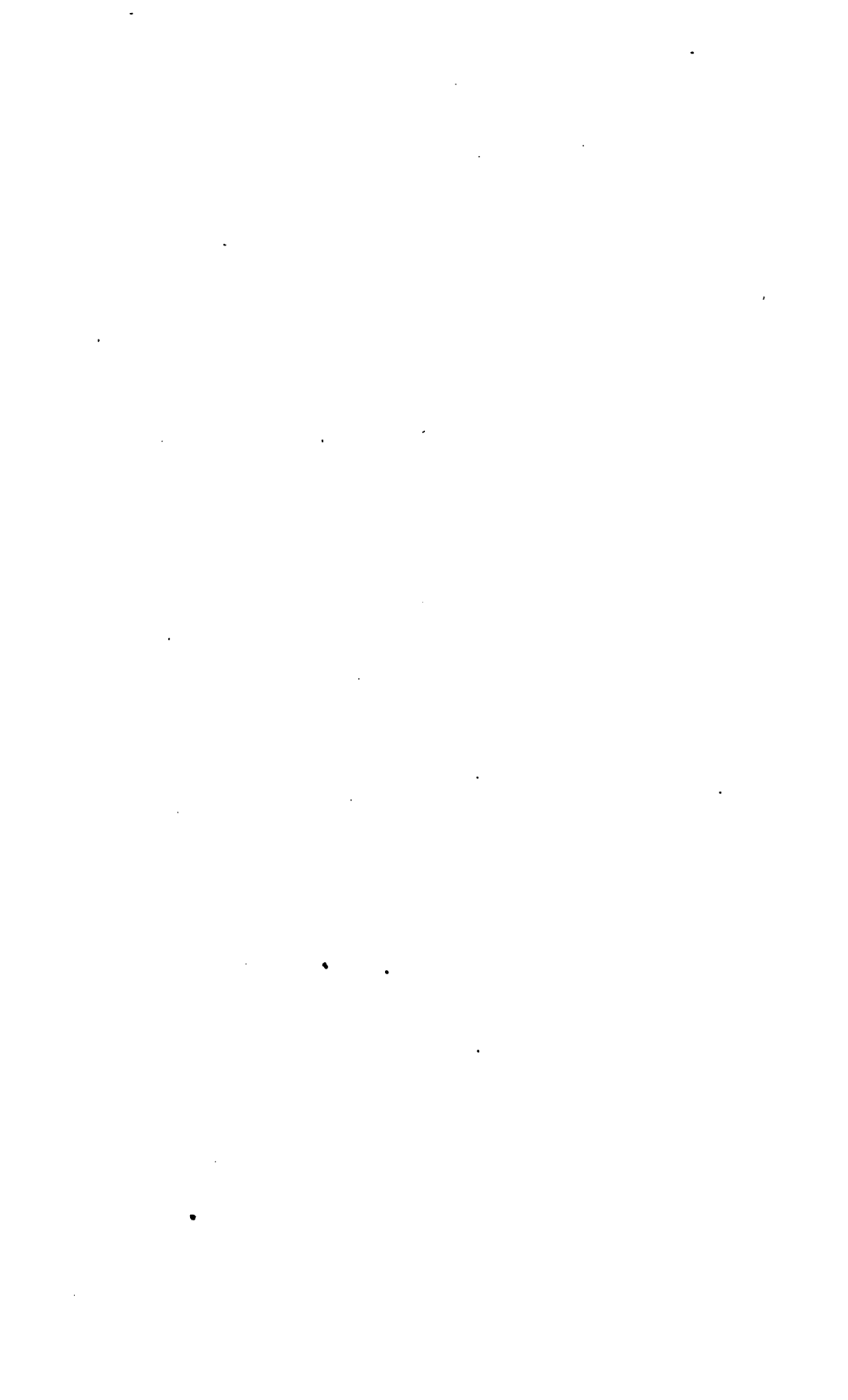
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Bulletin 94

Law Serial 4

DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
JOSEPH A. HOLMES, DIRECTOR

UNITED STATES MINING STATUTES
ANNOTATED

BY

J. W. THOMPSON

PART I.—SECTIONS AND STATUTES RELATING TO
METALLIFEROUS AND COAL MINING



WASHINGTON
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1915

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NOTE.

This report consists of two parts:

PART I.

Preface; explanation of entire report; a complete table of contents, and sections of the Revised Statutes and Statutes at Large relating to metalliferous and coal mining, with annotations. Pp. 1-860.

PART II.

Table of contents of Part II; Statutes at Large and sections of Revised Statutes relating to miscellaneous mining subjects, with annotations; a list of abbreviations; a list of sections of Revised Statutes; a list of Statutes at Large; a list of the sections of Revised Statutes cited; a list of the Statutes at Large cited; a table of all cases cited, and a word index. Pp. 861-1772.

ii

First edition. 1915.

PREFACE.

In order to be able to point out the laws and regulations best adapted to increase safety and efficiency in the mineral industries in the United States, the Bureau of Mines has undertaken the work of codifying all laws, rules, and regulations relating to mining, the primary purpose being to aid legislative bodies in framing uniform laws that would be an aid to the mining industry.

The United States mining statutes have been in force for almost half a century. The original enactment of 1866 was supplanted by the revision of 1872. No other revision has ever been undertaken, only a few amendments have been added, and the statutes have been made to apply to additional varieties of mineral deposits.

The first statute was enacted when mining on the public domain was in its infancy and before the needs of the industry were either understood or appreciated. The act was necessarily imperfect and in many respects indefinite, uncertain, and subject to a variety of interpretations. A perfect system of mining laws could not be expected in advance of both experience and development, nor could the act of 1866, or the revision of 1872, anticipate the future demands of the industry and provide for the various and complicated contingencies that have since arisen in the conduct of mining operations.

Since 1866 the mineral industries of the country have grown enormously. The capital invested in mining and allied industries in the United States amounts to billions of dollars, and these industries employ no less than 3,500,000 men. With this growth many legal questions have arisen that have led to a great number of conflicting decisions being handed down by the courts in their endeavors to define, construe, and apply to new conditions the vague or conflicting provisions in the statutes.

As a result of defective or indefinite laws the miner, in pursuing his enterprise on the public domain and in attempting to locate and acquire what the Government intended to give him, has been involved in difficulties and in harassing and expensive litigation.

This bulletin presents, in connection with each section and statute, abstracts of decisions of all courts and executive officers construing *these acts*, every such abstract being printed with appropriate title lines and headings in logical order immediately after the section or statute explained or interpreted. Thus the status of every Federal

mining law is shown, the purpose being to make the abstracts intelligible to all interested persons and to point out how the courts eliminate many defects and uncertainties and aid in the practical application of the statutes. In this way one is aided in determining the course to be taken in applying the provisions of a statute to a particular contingency.

This publication is for the benefit of those engaged in various mining enterprises, it being intended to serve as a guide in the location of claims and in the determination of mining rights and duties, and also to point out the right road to follow in order to insure increased efficiency and greater safety in the conduct of mining operations.

J. A. HOLMES.

AUTHOR'S EXPLANATION.

This work is a codification and annotation of the Congressional enactments relating to minerals, mineral lands, and mining. It covers every enactment of Congress from the original ordinance of 1785 to the present time, as well as all sections of the Revised Statutes of the United States relating to these subjects. These laws are grouped according to their general subject matter, and are arranged thereunder in numerical or chronological order. Many of the mining statutes include matter not pertinent to the subject, and only those parts of such acts are quoted as will properly show their relation to minerals and mineral lands and indicate how they should be construed. Some mining acts have been repealed or have become obsolete, and others have become incorporated substantially in sections of the Revised Statutes; but these are retained in order to show the changes made, and the constructions placed thereon by the courts are given as aids in construing the new or repealing acts.

The annotations consist of legal propositions abstracted from the decisions of the various courts and executive officers of the Government that have interpreted the sections and statutes so codified. These legal propositions are arranged under the different sections and acts with appropriate headings, titles, and subtitles, in logical order, exhibiting the present status of each particular section or act and its application to the subject of mines and mineral lands. The annotations do not purport to be abstracts of decisions on the substantive law of mines and mining generally, but are limited strictly to the interpretation placed on a given section or act definitely referred to by a court or executive officer by the number of the section of the Revised Statutes or the volume and page of the Statutes at Large in which the Congressional enactment is found.

It may be observed that the legal propositions stated are not always pertinent to the particular section or act under which they are classed and of which they purport to give a construction. The arrangement, however, is not an arbitrary one, but is so made for the reason that the courts or officers in the construction of a particular section or act definitely referred to by number or volume and page incorporated in the decision matter not strictly pertinent to the particular section or act so designated. This statement applies especially to the interpretations placed on the sections of the Revised Statutes.

The decisions abstracted for the purpose of this work are those of the United States Supreme Court, 234 volumes; the various Federal courts, 214 volumes; the decisions of the General Land Office, 42

volumes; the decisions of the General Land Office as reported in Copp's Land Owner, 20 volumes; Copp's Mineral Lands, 1 volume; Copp's Mining Decisions, 1 volume; Sickels's Mining Laws and Decisions, 1 volume; Opinions of the Attorneys General, 28 volumes, and the decisions of the courts of last resort of the several States.

It is desired to make readily accessible to laymen and professional men alike the contents of this work. For this purpose, and because of their importance, the general mining sections of the Revised Statutes have been placed first, followed by the sections and acts applicable to coal and coal lands, as being second in importance. Then follow miscellaneous sections and an alphabetical list of the various other subjects treated. In addition to this arrangement there is a general index of the subjects treated; a complete table of contents of the annotated subjects; a table of all sections of the Revised Statutes and of all the United States Statutes at Large, arranged in numerical and chronological order, and a similar table of all the sections and statutes cited in the annotations; a complete word index to the sections, statutes, and the entire body of annotations, and a table of cases, alphabetically arranged, of every case cited, with reference to the page or pages where any given case may be found. The references to cases give the page of the volume of the report where the case begins and also the particular page on which the stated proposition is found.

A list of abbreviations used in the work is given to show the system adopted and to designate by full title the publications so abbreviated.

Much care has been taken in the preparation of the work and the object has been to make it both complete and accurate. Particular effort has been made to adapt it to the needs of the practical miner and to make it available and useful to nonprofessional persons engaged in the various mining enterprises.

Acknowledgment is made of the valuable assistance rendered by Clarence B. Dutton and Union B. White.

J. W. THOMPSON.

GENERAL SUBJECTS TREATED.

PART I.

- Sections relating to metalliferous mining, page 1.
- Original mining act, amendment, and revised act, page 632.
- Coal-land sections and statutes, page 724.
- Sections relating to miscellaneous mining subjects, page 829.

PART II.

- Miscellaneous mining subjects, page 861.

CONTENTS.

PART I.

SECTIONS RELATING TO METALLIFEROUS MINING, PAGE 1.

	Page.
Section 2318, Revised Statutes.....	1
System of mining laws.....	1
Basis of present system.....	1
Customs of miners as part of system.....	2
Policy as to mineral lands.....	2
Mineral lands—Ownership and disposal.....	2
Reservation of mineral lands.....	2
Reserved for State selections.....	3
Manner of acquiring title to mineral lands.....	3
Mineral lands acquired only under mining laws.....	4
Mineral lands not disposed of as agricultural lands.....	4
Mineral lands—Meaning and test.....	4
Application of term “mineral”.....	5
Extent of mineral deposits contemplated by mining laws.....	5
Valuable mineral deposits.....	6
Question of fact.....	6
Pleading and proof.....	6
Entries for agricultural purposes—Effect.....	6
Mineral and agricultural contestants—Burden of proof.....	7
Particular mineral substances included in section.....	8
Section 2319, Revised Statutes.....	9
Ownership of mineral lands—Mining permitted.....	9
Government ownership.....	9
Mining on public lands permitted.....	10
Policy to encourage mining.....	10

	Page.
Section 2319, Revised Statutes—Continued.	
Disposal of mineral lands.....	11
Acquisition under prior mining laws.....	11
Land department charged with disposal of mineral lands.....	11
Mineral lands open to purchase.....	12
Acquisition subject to customs of miners.....	13
Effect of section on regulations and customs.....	13
Regulations and customs—Operation and extent.....	14
Mineral lands in reservations excluded.....	15
Lands valuable for minerals.....	15
Meaning and proof.....	15
Proof insufficient to show mineral character.....	17
Variety of minerals included.....	17
General principles.....	17
Specific minerals included.....	18
Specific minerals not included.....	20
Mining locations.....	21
What constitutes—Effect of location.....	21
Mining claim as distinguished from location.....	22
Methods of initiating rights.....	22
Discovery essential.....	23
Extralateral rights.....	24
Number of locations unlimited.....	24
Possessory rights of locators and owners.....	24
Occupation—Meaning.....	25
Title of locator—Statutory grant.....	26
State regulations of locations.....	26
Qualifications of locators.....	26
Citizens authorized to make locations.....	26
Corporations.....	27
Proof of citizenship.....	28
Aliens can not make locations.....	29
Alien as joint locator—Effect.....	30
Transfer by alien to citizen.....	30
Alien qualifying as citizen.....	31
Alienage—Who may question.....	31
Vein or lode—Definition.....	32
Mining claim as property.....	32
Ownership and transfer.....	32
Dower rights do not attach.....	33
Mineral and agricultural claimants—Burden of proof.....	33
Possession of mining claims—Jurisdiction of Federal courts.....	34
Patent—Effect as a conveyance.....	34
Section 2320, Revised Statutes.....	35
Construction and application of mining laws.....	35
Mining statutes construed together.....	35
Objects of mining statutes.....	36
Vein or lode.....	36
Necessity and extent of definitions.....	37
Strict definitions.....	38
What constitutes.....	40
What does not constitute.....	43
What constitutes a lode.....	44
Rock in place.....	45
Proof of existence—Question of fact.....	47

Section 2320, Revised Statutes—Continued.

	Page.
Mining locations or claims.....	48
Nature and effect.....	49
"Location" and "mining claim"—Use and meaning.....	51
Made on unappropriated public lands.....	51
Location on vein or lode.....	53
Location on apex of vein.....	54
Manner and method of making.....	54
Agreements to locate—Grubstake contracts.....	55
Who may make—Qualifications of locator.....	55
Effect of location—Rights of locator.....	56
Extralateral rights.....	58
Relocation.....	58
Form, extent, and dimensions.....	59
Locations lengthwise of lode.....	59
Measurements determined by vein or lode.....	60
Parallelogram in form.....	61
Length and width of location.....	62
Discovery essential.....	64
Object and nature of requirement.....	64
Discovery as initial act.....	64
Discovery a prerequisite.....	65
Basis of rights and source of title.....	66
Discovery a unit.....	66
What constitutes—Rock in place.....	67
Discovery within limits of location.....	68
Discovery outside of location—Effect.....	69
Discovery shaft.....	70
Order of steps immaterial—Conditions.....	71
Priority of discovery—Effect and rights.....	72
Sufficiency of discovery.....	73
Extent and value of discovery.....	75
Discovery insufficient.....	77
Discovery a question of fact.....	78
Kinds of mineral.....	80
Kinds of mineral—Instances.....	80
Surface lines.....	81
Location and direction of side lines.....	81
Location and direction of end lines.....	82
Parallelism of end lines—Purpose.....	83
Want of parallelism of end lines—Effect.....	85
Lines laid upon senior location—Effect.....	85
Locations on existing claims.....	87
Locations invalid.....	87
Overlapping claims—Effect and validity.....	88
Locations by force or fraud invalid.....	89
Location where senior location is void.....	90
Excessive location—Effect and validity.....	90
Possession of claim—How far essential.....	91
Mining location as property.....	93
Number of claims unlimited.....	94
Lode and placer claims—Relative rights of locators.....	94
State regulations—Validity.....	96
Rules and customs of miners.....	96
Location notice—Sufficiency and effect.....	97
Taxation of mining claims.....	97

	Page.
Section 2321 Revised Statutes.....	99
Proof of citizenship.....	99
Individual locator.....	99
Method of proving.....	99
Trustee as locator—Citizenship of beneficiary.....	100
Unincorporated association as locator.....	100
Corporation as locator.....	101
Alien locator.....	101
Effect and rights.....	101
Naturalization—Retroactive effect.....	101
Section 2322, Revised Statutes.....	102
Purpose of mining statutes.....	102
Common-law rule of ownership—Application to mineral lands.....	103
Mineral lands not acquired under other laws.....	104
Granting force of section—Veins and claims.....	104
Mining locations or claims.....	104
Location status—Jurisdiction of Land Department.....	104
Location on apex of vein.....	105
Right measured by length of apex.....	106
Location on blanket vein—Apex and rights.....	106
Subsurface vein as basis of location.....	107
Vein and lode synonymous.....	107
What constitutes a vein or lode.....	107
Evidences of existence of vein or lode.....	108
Discovery essential.....	108
Boundary planes determined by surface location.....	109
Locator's possessory rights.....	110
Construction of location rights.....	110
Object of location statute.....	111
Effect of location as a grant.....	112
Ownership acquired by location.....	112
Exclusive right to possession of surface.....	114
Extent and purpose of surface possession.....	116
Right as against intruder.....	116
Possessio pedis—Meaning and extent.....	117
Right of possession superior to town-site patent.....	118
Prior rights protected.....	118
Ownership of surface and veins.....	119
Extent of surface ownership and possession.....	120
Surface possession protected—Priority of rights.....	120
Right to maintain or defend possession.....	121
Nature of location as property.....	122
Mining location as real property.....	124
Sale and transfer of claims—Statute of frauds.....	124
Title acquired by possession—Statute of limitations.....	125
Rights of heirs and assigns.....	126
Locator not required to purchase or obtain patent.....	127
Locations can not be set apart for public use.....	127
Ownership of veins.....	127
Application of section to veins.....	127
Extent and limitations on ownership.....	128
Ownership dependent on position of apex.....	129
Presumption as to ownership of vein.....	130
Presumption of ownership overcome by proof.....	131
Ownership of veins at point of intersection—Right of way.....	132

Section 2322, Revised Statutes—Continued.	Page.
Extralateral rights.....	133
Nature and extent.....	134
Extralateral rights fixed by statute.....	134
Extralateral rights superior to possessory rights.....	135
Extralateral rights depend on position of apex.....	136
Location must be on apex.....	138
Location must be lengthwise of vein to secure rights.....	138
Surface location controls extralateral rights—Limitations.....	139
Extralateral rights confined to dip of vein.....	140
Dip and downward course of vein—Meaning.....	141
Limitations on rights to follow dip of vein.....	141
No right to follow vein on strike.....	142
Effect where vein passes through side line.....	142
Irregular or cross locations—Effect.....	144
Governed by location of end lines.....	145
Direction of end lines.....	145
Proper location of end lines.....	145
End lines adjustable.....	146
Limited by vertical planes of end lines.....	146
Vein not required to extend from end line to end line.....	148
End lines of all veins within location.....	148
Parallelism of end lines.....	149
Side lines may be end lines.....	150
Presumption as to side lines after patent.....	152
Identity and continuity of vein.....	152
Identity of vein.....	152
Continuity of vein essential.....	152
Want of identity and continuity—Effect.....	153
Vein extending into placer claim—Effect.....	154
Vein extending into agricultural land—Effect.....	154
Burden of proof in asserting extralateral rights.....	154
Conflict of rights—Preference in senior locator.....	155
Extralateral rights of junior locator.....	156
Relative rights of locators to follow vein.....	157
Effect of rights where lines are laid on existing locations.....	157
Conflicting extralateral rights—Determination.....	158
Use of surface of adjoining claims.....	158
Extralateral rights not affected by patent.....	159
Trespass—Presumption and justification.....	160
Patent for mining location.....	161
Effect as a grant.....	161
When patent denied.....	161
Relief against patent—Determination.....	162
Rules and regulations of miners.....	162
State regulations—Extent and validity.....	162
Jurisdiction of courts—Federal questions.....	163
Section 2323, Revised Statutes.....	164
Rights granted tunnel owners.....	164
Purpose and application of section.....	165
Construction of particular terms used.....	165
Rights granted by section.....	166
Nature of tunnel rights.....	166
Limitations on rights of tunnel owner.....	167
Rights secured according to local laws and customs.....	168

Section 2323, Revised Statutes—Continued.	
Rights granted tunnel owners—Continued.	Page.
Tunnel owner protected pending diligent prosecution.....	168
Failure to prosecute work diligently	168
Tunnel rights not dependent on discovery.....	169
Line of tunnel—Meaning.....	169
Size and extent of tunnel location.....	170
Development projects not representation work.....	170
Rights of tunnel owner on discovery of vein.....	170
Tunnel rights subject to those of prior surface locations.....	170
Tunnel rights superior to those of subsequent surface locators.....	172
Extralateral rights of tunnel owner.....	173
Excessive length of tunnel—Effect.....	173
Right to survey and plat.....	173
Failure of tunnel owner to adverse patent application—Effect.....	173
Patent for tunnel not authorized.....	174
Location of vein after discovery in tunnel.....	174
Necessity and nature.....	174
Surface location not required.....	174
Extent and form of tunnel location.....	175
Notice of location—Necessity.....	175
Section 2324, Revised Statutes	177
Construction of section.....	178
Mining location and claim	179
Definition—"Location" and "claim" synonymous.....	179
What constitutes a location.....	180
Discovery essential.....	181
Time for completion of location.....	181
Amended location.....	182
Right to change surface lines.....	182
Conflicting locations—Priority.....	183
Location within limits of prior location—Effect and validity.....	184
Possessory rights and title.....	184
Right to maintain and defend location.....	186
Conditions as to possession and ownership.....	187
Possession without purchase.....	188
Mining claims as property—Sale and transfer—Estoppel.....	188
Mining claims not included in reservations.....	189
Locator's right to patent—Entry—Protest.....	189
Judicial notice as to mining locations.....	189
Statutory regulations.....	190
State regulations permitted.....	190
Statutory regulations—Instances.....	191
Miners' rules and regulations.....	192
Miners permitted to make rules and regulations.....	192
Mining districts.....	193
Customs—Proof and presumptions.....	193
Regulations as to amount of work.....	194
Regulations as to location, record, and notice.....	195
Violations of regulations—Effect.....	195
Location notice or certificate.....	196
Notice of location not required.....	196
Notice or certificate permitted—Effect.....	197
Object of location notice.....	198
General requisites and construction.....	199

Section 2324, Revised Statutes—Continued.

	Page.
Location notice or certificate—Continued.	
Particular requirements.....	200
Requirments as to location certificate.....	200
Notice must refer to natural object.....	201
Sufficiency and effect of notice.....	201
Sufficiency of notice—Instances.....	202
Insufficiency of notice—Instances.....	203
Local regulations of miners as to notice.....	204
Statutory regulations as to notice.....	204
Amended location notice or certificate.....	205
Errors in location notice—Effect and correction.....	206
Temporary destruction of notice—Effect.....	206
Declaratory statement.....	206
Definition and nature.....	206
Sufficiency in form.....	207
Verification—Sufficiency.....	207
Record—Purpose and effect as notice.....	208
Record of location.....	208
Absence of requirement.....	208
Purpose and effect of record.....	209
Local laws and regulations may require record.....	210
General provisions where record is required.....	211
Sufficiency of record to identify claim.....	211
Reference to objects or monuments.....	212
Record not conclusive.....	212
Place of record.....	213
Marking location on the ground.....	213
Boundaries must be traceable.....	213
Provisions for marking location are mandatory.....	215
Purpose of requirement.....	216
Construction of requirement.....	217
Location and not boundaries required to be marked.....	218
Time for marking location.....	218
Methods of marking.....	220
Sufficiency of markings generally.....	220
Sufficient markings—Instances.....	221
Insufficient markings—Instances.....	223
Failure to comply with requirement—Effect.....	224
Change of boundaries—Intervening rights.....	224
Destruction of marks or boundaries.....	225
Description of location or claim.....	225
Purpose of section.....	226
Sufficiency of description in notice or record.....	226
Reference to objects or monuments.....	227
Insufficient reference to objects or monuments.....	228
Permanent monuments—Question of fact.....	228
Permanent monuments—What constitutes.....	229
Existing mining claims as permanent monuments.....	230
Location of natural object or permanent monument.....	231
Mineral monuments.....	231
Discrepancies in description—Monuments control.....	231
Mistake or variance—Record not conclusive.....	232
Swinging claims.....	233

Section 2324, Revised Statutes—Continued.

	Page.
Annual labor or representation work.....	233
Construction of section—Provisions mandatory.....	234
Purpose of requirement—Evidence of good faith.....	234
Performance a condition to possession but not patent.....	236
Amount of work required.....	236
Value of work or improvements—Determination.....	238
Local regulations—Effect and validity.....	239
Who may perform work and make improvements.....	239
Time for performance of work or making improvements.....	240
Character of work or improvements generally.....	240
Labor or improvements for developing claim.....	241
Services of watchman.....	242
Traveling expenses.....	242
Development work and improvements outside of claim.....	243
Kinds of work or improvements outside of claim.....	244
General system of development work for group claims.....	245
Development work and improvements for group claims.....	245
Value of work or improvements on one of group claims.....	247
Claims held in common—Contiguous claims.....	247
Insufficient development work or improvements.....	248
Tunnel construction work.....	248
No work required after application and entry.....	249
Failure to perform work—Effect.....	250
Resumption of work—Meaning and effect.....	251
Proof of performance of work.....	252
Performance of work—Jurisdiction to determine.....	253
Forfeiture of claim.....	254
Construction of section.....	254
What constitutes forfeiture.....	255
Forfeiture by failure to work.....	255
Forfeiture by abandonment.....	256
Forfeiture and relocation.....	257
Proof to establish forfeiture.....	257
Abandonment of claim.....	258
What constitutes—Intention.....	259
Abandonment by failure to perform work.....	260
Abandonment by conveyance.....	260
Abandonment by absence.....	260
Abandonment by lapse of time.....	261
Proof of abandonment.....	261
Effect of abandonment.....	261
Abandonment of part or interest—Effect.....	262
Relocation of claim.....	263
When claims are subject to relocation.....	263
Relocation on existing claim—Validity.....	263
Original locator may relocate his claim.....	265
Conditions for relocation.....	265
Failure to perform statutory requirements.....	266
Resumption of work prevents relocation.....	266
No relocation after application for patent and entry.....	268
Claims not subject to relocation—Instances.....	268
Rights and relation of locator and relocater.....	270
Rights of relocater.....	270
Relocation by agent or trustee—Effect.....	271

Section 2324, Revised Statutes—Continued.	Page.
Coowners.....	271
Nature of estate and relation of cotenants.....	272
Who are and who are not coowners.....	272
Performance of assessment work by one coowner.....	273
Remedy against delinquent coowner.....	273
Delinquency of coowner—Effect.....	274
Notice to delinquent coowner necessary.....	275
Publication against coowner—Sufficiency.....	275
Conveyance by coowner—Effect on right to forfeit.....	276
Interest of coowner to be forfeited.....	276
Proof to establish forfeiture.....	276
Rights and title acquired by forfeiture.....	277
Title acquired by conveyance by coowner.....	278
Liability of coowner as trustee.....	278
Patent proceedings by one coowner.....	279
Mineral surveyors.....	280
Appointment and duties.....	280
Survey of claims—Expenses.....	280
Land or mineral district.....	280
Jurisdiction of courts—Federal questions.....	281
Amendments to section 2324, Revised Statutes.....	281
17 Stat. 483, March 1, 1873.....	281
Time for making annual expenditure.....	281
General system of work.....	281
18 Stat. 61, June 6, 1874.....	282
Time for making annual expenditures extended.....	282
18 Stat. 315, 1 Supp. 62, February 11, 1875.....	282
Tunnel construction as assessment work.....	283
Tunnel claims—Kinds.....	283
21 Stat. 61, 1 Supp. 276, January 22, 1880.....	283
Purpose of amendment—Uniform date for commencement of work.....	284
Development work—Time of making.....	284
Improvements—Meaning.....	285
Assessment work—Lode and placer claims.....	285
26 Stat. 6, November 3, 1893.....	285
Assessment work suspended—Notice of intention to hold claim.....	286
28 Stat. 114, July 18, 1894.....	286
Assessment work suspended.....	287
30 Stat. 651, 2 Supp. 880, July 2, 1898.....	287
Enlisted persons exempt from assessment work.....	288
38 Stat. 235, December 1, 1913.....	288
Section 2325, Revised Statutes.....	289
Patent proceedings—Construction of section.....	290
Scope and purpose.....	290
Nature of proceedings.....	291
Disposal of mineral lands.....	291
Nature and regulation of claims before patent.....	292
Land Department and officers.....	292
Jurisdiction and authority.....	292
Authority of Secretary of the Interior.....	293
Jurisdiction to order hearing.....	294
Matters to be passed upon—Duties and powers.....	294
Judicial character of proceedings.....	295

Section 2325, Revised Statutes—Continued.

	Page.
Land Department and officers—Continued.	
Determination of department conclusive	296
Department without jurisdiction.....	296
Termination of jurisdiction.....	297
Rejection of application—Effect and power.....	297
Court decisions binding on department	298
Authority to issue or qualify patents—Invalid patents—Conclusiveness of patents	298
Application for patent.....	299
Application—Filing and showing.....	300
Qualifications of applicant.....	300
Death of applicant—Effect on issuance of patent.....	301
By coowner or joint owner.....	301
Filing in proper land office.....	302
Form and sufficiency.....	302
Affidavit and oath of applicant.....	304
Surface incident to lode.....	305
Appropriation and segregation.....	305
Order of time—Priority—Junior applicant.....	305
Compliance with requirements must be shown.....	306
Compliance with conditions generally.....	306
Location a prerequisite step.....	308
Discovery a prerequisite.....	308
Possessory right essential.....	309
Filing plats required—Purpose.....	311
Abstract of title required.....	312
Payment of price.....	313
Mineral character of land.....	313
Proof as to value of minerals.....	313
Value to support discovery may justify patent.....	314
Determination as to mineral character.....	315
Duty of department to determine.....	315
Determination conclusive.....	316
Sufficiency as between contesting claimants.....	316
Burden of proof.....	317
Surveyor's return as to mineral character—Burden of proof.....	318
Burden of proof after surveyor's return.....	319
Proof of mineral springs insufficient.....	319
Description of claim.....	320
Accuracy required.....	320
Connection with survey or monuments.....	321
Reference to natural objects or monuments.....	321
Mistakes and insufficient description—Effect.....	322
Lines and boundaries—Location and effect.....	322
Group of claims in one application.....	323
Noncontiguous tracts not patentable.....	324
Relinquishment of part of claim.....	325
Conflicting claims—Exclusion of conflicting areas—Effect.....	326
Second inclusion of land prohibited.....	328
Right to patent.....	329
Application for placer claim—Practice.....	329
Application for lode within placer claim.....	330
Application for claim within town sites.....	331

Section 2325, Revised Statutes—Continued.

	Page.
Application for patent—Continued.	
Application for mill site.....	331
Application for nonmetalliferous substances.....	332
Right of applicant to certificate of purchase.....	332
Applicant entitled to patent—Equitable owner.....	332
Rehearing.....	333
Prosecution of application.....	334
Diligence required.....	334
Unreasonable delay—Effect.....	334
Entry completed within calendar year.....	335
Excuse for delay.....	336
Survey of mining claim.....	337
Duty and jurisdiction of surveyor general.....	337
Nature and sufficiency of survey—Effect.....	338
Survey and plat—Time of making.....	340
Survey and description—Monuments.....	340
Surveyor general's certificate as to plat and survey.....	341
Monuments control field notes.....	342
Connecting survey with public survey.....	342
Amended survey permitted.....	342
Errors in survey and description.....	342
Survey of adverse claim necessary.....	343
Junior survey must show conflict.....	343
Survey incorporated in patent.....	343
Survey on patented ground—Effect.....	343
Failure of claimant to have survey—Effect.....	343
Survey as evidence.....	343
Money deposited for survey—Refunding.....	344
Improvements and expenditures.....	344
Requirements and purpose.....	344
Nature and sufficiency.....	345
Beneficial character.....	346
Particular improvements and buildings.....	347
Time of making.....	347
Expenditures outside of claims.....	348
Expenditures for group claims.....	349
Regulations as to expenditures on group claims.....	350
Apportionment of improvements to separate claims of group.....	351
Improvements not apportioned to noncontiguous claims.....	352
Expenditures for "pending year"—Meaning.....	353
Surveyor general's certificate as to work and improvements.....	418
Proof of expenditures.....	419
Cost as a basis of calculation.....	420
Time of making proofs.....	421
Notice of application for patent.....	421
Purpose and reason.....	421
Three methods of giving notice—Places of posting.....	422
Posting notice on claim.....	422
General requirements—Sufficiency.....	424
Conspicuous place—Meaning.....	425
Conspicuous place—Instances.....	426
Time of posting notice and plat.....	426
Posting in register's office.....	426

Section 2325, Revised Statutes—Continued.

	Page.
Notice of application for patent—Continued.	
Publication in newspaper.....	360
Duty of register.....	360
Designation—Discretion of register.....	361
Nearest newspaper—Meaning and discretion.....	362
Sixty days' publication—Number of insertions.....	363
Computation of time—Proof.....	364
Form and sufficiency.....	365
Insufficiency—Instances.....	368
Effect of errors in notice.....	368
Failure to give notice—Effect.....	369
Proof of publication and posting plat.....	369
Adverse claims—Proceedings and suit.....	370
Scope of section.....	370
Purpose of section—Manner of asserting rights.....	371
Nature of adverse claims.....	372
Duty to file and assert claim.....	373
Persons not required to adverse.....	374
Special notice to adverse claimants not required.....	375
Form and sufficiency of adverse claims.....	375
Time of filing.....	377
Excuse for failure to file within statutory period.....	378
Claims filed after expiration of time—Effect.....	378
Irregularities in filing—Effect.....	379
Proof to sustain adverse claim.....	379
Stay of proceedings.....	379
Failure to file adverse claim—Effect and presumptions.....	380
Failure of coowner to adverse—Effect.....	382
Failure to adverse—Effect of agreement.....	382
Presumption of absence of adverse claim may not prevail.....	382
Commencement of adverse suit—Parties and practice.....	383
Questions determined by adverse suit—State courts.....	384
Federal jurisdiction.....	385
Protest and protestant.....	385
Right to protest or intervene.....	385
Form and sufficiency of protest.....	386
Protestant without interest—Effect and rights.....	387
Protestant with interest—Effect and rights.....	387
Limitations on protestant's rights.....	388
Burden on protestant.....	389
Appeal.....	389
Practice.....	389
Right to appeal.....	389
Line No right to appeal.....	390
Group.....	390
Noncoition and meaning.....	391
Relinquend validity.....	391
Conflicts precedent to entry.....	392
Second entry implied.....	392
Right of application necessary before entry.....	393
Application entry may stand.....	393
Application to board of equitable adjudication.....	394
Appli	

Section 2325, Revised Statutes—Continued.

Entry—Continued.

	Page.
Conflicting ground—Priority of location.....	394
Noncontiguous claims.....	395
Equitable ownership—Title held in trust.....	395
Payment of price—Effect and rights.....	396
Conclusive effect of entry and certificate.....	397
Title operates by relation.....	398
When entry will be canceled.....	398
When entry will not be canceled.....	398
Practice after cancellation.....	399
Cancellation of entry—Effect.....	400
Patent—Issuance.....	400
Scope and purpose of section.....	401
Issuance and purpose of patent.....	402
Issuance in name of applicant or locator.....	403
Corporation entitled to patent.....	404
Compliance with statutes necessary.....	404
Description of land in patent.....	405
Part of severed claim patented.....	405
Group of claims included in one patent.....	406
Not issued for ground patented or land excluded.....	407
Patent to coowner.....	407
Patentee holding as trustee.....	408
Vested right to patent.....	408
Patent merges inferior estate.....	408
Patent for contiguous or separate claims.....	409
Patent for noncontiguous tracts.....	409
Patent for placer claim—Effect and rights of patentee.....	409
Patent for lode within placer claim.....	410
Patent issues for surface ground and veins and lodes.....	410
Effect of issuance as a determination of questions.....	411
Effect as grant of subsurface.....	412
Force and extent as a conveyance.....	412
As a grant of extralateral rights.....	413
Presumptions as to regularity and validity of precedent steps.....	414
As evidence of acts and rights.....	415
Effect on date of location or proceedings.....	415
Patent operates by relation.....	415
Reservations in patent—Limitation and effect.....	416
Conclusiveness.....	417
Questions not concluded by patent.....	418
Not subject to collateral attack.....	419
Void patent.....	420
Void patent impeached collaterally.....	421
Strangers may not attack patent.....	421
Correcting mistake in patent—Reconveyance and reissue.....	421
Cancellation and vacation.....	422
General provisions and grounds.....	422
Cancellation for fraud.....	424
Patent under homestead law not defeated.....	425
Patent subject to prior tunnel site.....	426
Title subject to vested water rights.....	426

	Page.
Section 2325, Revised Statutes—Continued.	
Amendments to section 2325, Revised Statutes.....	426
21 Stat. 61, 1 Supp. 276, January 22, 1880.....	426
Construction of amendment.....	427
Effect on pending applications.....	427
Affidavit by agent.....	427
Nonresidence of claimant.....	427
Presence or residence of claimant within district.....	428
Effect of unauthorized affidavit.....	428
Affidavit as to citizenship.....	428
Patent—Effect and limitation.....	428
Section 2326, Revised Statutes.....	429
Construction and application.....	430
Purpose and scope.....	430
Authority and construction.....	430
Application and methods of relief.....	431
Determination of rights by suit.....	432
“Claim” and “claimant”—Meaning.....	433
Adverse claims—Filing.....	433
Filing and notice.....	434
Time of filing.....	434
Effect of filing.....	434
Duty and necessity of filing.....	434
Who may adverse.....	435
Assumptions in absence of adverse claims.....	436
Failure to file—Waiver of rights.....	437
Rights and claims not waived.....	438
Excuse for not filing in time.....	438
Notice of filing—Publication.....	439
Proper parties.....	439
Sufficiency in form and substance.....	440
Oath of claimant—Nature and boundaries of claim.....	440
Substance and sufficiency.....	441
What constitutes.....	442
Description of claim—Survey and plat.....	442
Claims and interests not adverse.....	444
Claims and interests not adverse—Instances.....	445
Protest—Force and effect.....	446
Proceedings on adverse claims.....	447
Time of commencement.....	448
What constitutes commencement.....	449
Nature and purpose of proceedings.....	450
Legal and equitable actions.....	452
Proceedings insufficient.....	453
Jurisdiction of courts.....	453
Meaning and application.....	453
Courts of competent jurisdiction—Meaning.....	454
Federal or State courts.....	455
Federal questions—Effect on jurisdiction.....	456
State courts—Extent and authority.....	458
State courts—Kinds of actions—Practice.....	459
Power of Congress to regulate State court proceedings.....	460
Equity jurisdiction.....	461
Waiver of objections to jurisdiction.....	461

Section 2326, Revised Statutes—Continued.

Proceedings on adverse claims—Continued.

	Page.
Questions for determination by courts.....	462
Possessory rights only determined.....	462
Determination by court—Proof before Land Department.....	463
Title of United States not affected by court's decision.....	464
Validity of original location.....	464
Question of discovery.....	465
Performance of representation work.....	466
Resumption of work.....	466
Question of abandonment.....	466
Question as to relocation.....	467
Character of land in controversy.....	467
Underground rights.....	467
Waiver or relinquishment.....	468
Proof of customs.....	468
Presumptions indulged by courts.....	468
Diligence in prosecutions of proceedings.....	468
Stay of proceedings in Land Office.....	469
What proceedings are not stayed.....	471
Failure to commence proceedings within statutory time—Effect.....	472
Suit commenced after expiration of time—Effect and rights.....	473
Termination of proceedings.....	473
By dismissal.....	473
Other methods of termination.....	474
Questions not within court's jurisdiction.....	474
Pleading and practice.....	475
Claims must be asserted by proper pleading.....	475
Sufficiency of complaint.....	476
Citizenship—Pleading and proof.....	477
Intervention by interested persons.....	478
Defense—Sufficiency of answer.....	478
Recovery—Proof.....	479
Right to recover—Proof of title—Burden.....	479
Recovery by either or both parties.....	481
Neither party entitled to recover.....	482
Proof sufficient to sustain claim.....	483
Conclusiveness of judgment.....	483
Questions concluded by judgment.....	483
Conclusiveness of judgment of State court.....	484
Conclusiveness as between lode and placer claimants.....	484
Conclusiveness of judgment on Land Department.....	485
Certified copy of judgment.....	486
Authority and jurisdiction of Land Department.....	487
Jurisdiction and duty as to adverse claims.....	487
Authority of Land Office—Instances.....	489
Want of authority—Instances.....	489
Department must follow court decisions.....	491
Surveyor General—Powers and duties.....	492
Proceedings in department after termination of suit.....	492
Issue of patent pursuant to judgment.....	493
Departmental regulations.....	493
Patent—Effect.....	493

	Page.
Section 2326, Revised Statutes—Continued.	
Lavagnino v. Uhlig.....	494
Comments and criticisms.....	494
Amendments to section 2326, Revised Statutes.....	496
21 Stat. 505, March 3, 1881.....	496
Amendatory act.....	496
Purpose and object.....	497
Nature of proceedings—Trial.....	497
Jurisdiction of Federal courts—Practice.....	497
Actions in State courts—Form and practice.....	497
Proceedings in aid of Land Department.....	498
Proof required by each party.....	498
Defense—Pleading and proof.....	499
Determination of rights—Effect.....	499
Neither party entitled to judgment.....	500
Effect of judgment against both parties.....	500
Termination of proceedings.....	501
Applicant may perfect title after suit.....	501
Municipality may intervene.....	502
22 Stat. 49, 1 Supp. 338, April 26, 1882.....	502
Proof of citizenship.....	502
Adverse claim filed by agent—Verification.....	503
36 Stat. 459, June 7, 1910.....	503
Section 2327, Revised Statutes.....	504
Survey as part of patent.....	504
Lode claims—Surveys and descriptions.....	504
Descriptions—Monuments control.....	504
Amendment to section 2327, Revised Statutes.....	505
33 Stat. 545, April 28, 1904.....	505
Amendatory act.....	505
Construction and application.....	505
Second patent not granted without notice.....	505
Section 2328, Revised Statutes.....	506
Scope and application of section.....	506
Section 2329, Revised Statutes.....	507
Placer claims.....	507
Force and effect of section.....	507
Definition.....	508
Acquisition of placer ground.....	509
Application of lode laws to placer claims.....	509
Lands subject to placer location—Mineral character.....	510
Insufficient proof of mineral character.....	511
Discovery essential to placer location.....	511
Number of discoveries required.....	513
Boundaries not required to be marked.....	513
Excessive location—Excluding discovery point.....	514
Surface lines on existing locations—Effect.....	514
Locations conforming to public surveys.....	514
Irregular location—Locator not protected.....	515
Relocation.....	515
Record not required.....	515
Possessory rights.....	515

Section 2329, Revised Statutes—Continued.

	Page.
Placer claims—Continued.	
Unpatented location—Effect.....	516
Locations on State and school lands—Effect	516
Town-site claimants—Conflicting rights.....	517
Nature and forms of deposits.....	517
General provisions.....	517
Particular forms of deposits.....	518
Deposits warranting location.....	518
Deposits not warranting locations.....	520
Calcium phosphate lode located as placer—Effect.....	521
Application for placer patent.....	521
Sufficiency of application—Practice.....	521
Performance of statutory requirements—Representation work.....	522
Designation of use of claim—Value enhanced by timber.....	522
Quantity of land included.....	522
Citizenship of applicant for patent.....	523
Adverse proceedings.....	523
Acceptance of application—Effect.....	523
Veins and lodes within placer limits—Ownership and rights.....	523
Patent for placer claim—Force and effect.....	524
Section 2330, Revised Statutes.....	526
Construction and application of section.....	526
Location by individual—Quantity.....	526
Location by association—Quantity.....	527
Location by dummies.....	528
Possession of association claim.....	528
Location by corporation—Quantity.....	528
Discovery on placer claims.....	528
Discovery essential.....	529
Discovery on one subdivision—Effect and sufficiency.....	529
Locations on surveyed and unsurveyed lands.....	530
Description and form.....	530
Division of legal subdivisions.....	531
Relocation.....	531
Agricultural and mineral lands.....	531
Proof of character.....	531
Segregation of mineral and agricultural lands.....	532
Asphaltum and phosphate lands as placer locations.....	532
Consolidation of claims.....	532
Joint entry.....	532
Sale and acquisition of claims—Patent.....	533
Section 2331, Revised Statutes.....	534
Object and construction of section.....	534
Quantity of land located as placer.....	534
Location by individual—Quantity.....	535
Location by individual—Doctrine of relation.....	535
Amending location—Effect.....	536
Location by agents or dummies.....	536
Location by association—Quantity.....	537
Location by corporation—Quantity.....	537
Form of location—"Shoe-string" locations.....	538
Excessive location—Effect.....	538
Discovery on subdivisions of associated locations—Number.....	539

	Page.
Section 2331, Revised Statutes—Continued.	
Locations on surveyed lands.....	540
Purpose of requirement.....	541
Locations conforming to survey.....	541
Locations conforming to survey as near as practicable—Meaning.....	542
Locations conforming to survey—Marking boundaries.....	543
Locations on surveyed land—When plat and survey are required.....	544
Locations on unsurveyed lands.....	544
Possessory rights—Effect of temporary absence.....	545
Homestead and mineral claimants—Relative rights.....	545
Representation work—Value of improvements—Apportionment.....	546
Placer ground—Beds of streams.....	546
Section 2332, Revised Statutes.....	547
Purpose and application of section.....	547
Adverse possession.....	548
Possession for period of limitations.....	548
Period of limitations—Meaning.....	549
Break in possessory title—Effect.....	549
Rights protected.....	550
Assignees and purchasers protected.....	550
Lienholders protected.....	550
Application for patent.....	550
Practice and proof.....	551
Possessory right determined by local customs and rules.....	551
Compliance with requirements.....	552
Performance of representation work excused.....	552
Failure to prosecute patent proceedings.....	552
Adverse claims—Effect on possessory title.....	553
Section 2333, Revised Statutes.....	554
Placer and lode claims.....	554
Relative rights of placer and lode claimants.....	554
Placer claim defined.....	555
Regulation of placer claims.....	556
Application of section to veins within placer limits.....	556
Nature and coincidence of placer and lode claims.....	557
Right to surface conflict ground.....	557
Veins or lodes within placer claims.....	558
Known veins or lodes—Meaning.....	558
What constitutes a vein or lode within meaning of section.....	559
Time when vein or lode is known to exist.....	559
Known vein or lode outside of placer limits—Effect.....	560
Knowledge of vein or lode.....	560
What constitutes—Duty and presumption.....	560
Theory or belief insufficient.....	561
Location marked on ground as knowledge.....	562
Record of lode location as knowledge.....	562
Burden of proof as to known vein.....	562
Application for placer patent.....	563
Showing as to existence of vein or lode.....	563
Application supported by affidavit.....	563
Failure to include known veins or lodes—Waiver.....	564
Vein or lode not known—Effect.....	565
Existence of vein or lode a question of fact.....	565
Conclusiveness of application as to known vein.....	565

Section 2333, Revised Statutes—Continued.	Page.
Application for lode after placer patent.....	566
Owner of known lode may apply.....	566
Proof of lode claim within placer limits.....	566
Known lodes reserved from placer patent.....	567
Known lodes located after placer patent.....	567
Application suspended or rejected.....	567
Application for placer and lode.....	568
Width of lode claim within placer limits.....	568
Adverse proceedings—Placer and lode claimants.....	569
Duty to adverse.....	569
Persons not required to adverse.....	569
Adverse claim—Pleading.....	570
Patent for placer claim.....	570
Extent and acreage.....	570
Known lodes not acquired by placer patent.....	571
Unknown lodes included in placer patent.....	572
Patent for lode claim within placer limits—Effect.....	572
Exceptions as to vein or lode—Extent.....	573
Patents for placer and lode claims—Rights of patentees.....	574
Presumptions and conclusiveness.....	575
Vacation of patent because of known lodes.....	575
Subsequent discovery of vein or lode—Effect.....	576
Section 2334, Revised Statutes.....	577
Mineral surveyors—Survey of mining claims.....	577
Appointment of deputy surveyors.....	577
Authority of surveyor general.....	578
Qualifications of mineral surveyors.....	578
Survey of mining claim—Right of claimant.....	578
Mineral claimant may contract with any surveyor.....	578
Expense of survey—Payment by claimant.....	579
Deposit for expense of survey.....	579
Resurvey of mining claim—Compensation.....	580
Mineral surveyors not to be interested in claims surveyed.....	580
Report of surveyor—Evidence of mineral character of land.....	581
Section 2335, Revised Statutes.....	582
Construction and application of section.....	582
Notice of contest.....	582
Provisions as to affidavits are mandatory.....	582
Oath must be by applicant.....	583
Oath by officer of corporation.....	583
Officer authorized to verify affidavits—Place of verification.....	583
Oath administered by agent of corporation—Effect.....	584
Amendment of verification or affidavit.....	585
Section 2336, Revised Statutes.....	586
Ownership of intersecting veins.....	586
Construction of section.....	586
Application of section to locations and veins.....	587
Veins—Construction and meaning.....	588
Crossing and intersecting of veins—Dip and strike.....	588
Ownership of ore at intersection—Priority of location.....	589
Space of intersection—Meaning.....	590
Ownership below intersection—Priority of location.....	590
Right of way to junior locator—Meaning and extent.....	591
Adverse proceedings—Application as to intersection.....	592
Federal question.....	592

	Page.
Section 2337, Revised Statutes.....	593
Construction and application of section.....	593
Purpose of section.....	593
Purpose of first clause of section.....	594
Construction of second clause of section.....	595
Meaning of "vein or lode" in this section.....	595
Mill-site locations.....	595
Location as mining claim—Rights of locator.....	595
Possession of mill site.....	596
Adjacent and noncontiguous—Meaning.....	596
Mill site on contiguous land—Exceptions.....	596
Application for patent for mill site.....	597
Mill site patented with lode claim.....	597
Notice—Publication and posting—Proof.....	598
Nonmineral character of land.....	598
Proof as to location of mill site.....	600
Mill site—Land not contiguous to lode claim.....	600
Proof of use as mill site necessary.....	600
Use of mill site for mining purposes—Meaning.....	601
Improvements on mill site—Sufficiency and proof.....	602
Improvements—Quartz mill site or reduction works.....	603
Improvements insufficient.....	603
Use of mill site for water for mining purposes.....	604
Sufficiency.....	604
Insufficiency.....	604
Use of mill site for timber for mining purposes.....	605
Use of mill site in connection with tunnel.....	605
Quantity of land for mill site.....	605
Number of mill sites.....	605
Performance of statutory requirements—Representation work.....	606
Adverse claims.....	606
Mill site protected by adverse claim.....	606
Contest with agricultural claimant—Compliance with local laws.....	607
Contest with town-site claimant.....	607
Mill site within limits of railroad grant—No patent.....	607
Corporation's right to patent for mill site.....	607
Survey of mill site—Sufficiency.....	607
Section 2338, Revised Statutes.....	608
Purpose of section.....	608
State laws for working mines.....	608
Mining easements.....	608
Section 2339, Revised Statutes.....	609
Construction and application of section.....	609
Purpose and application.....	609
Grant of water rights.....	610
Right to appropriate water.....	610
Extent of right of appropriation of water.....	611
What constitutes appropriation of water.....	612
Presumption as to appropriation of water.....	612
Easements granted and protected.....	612
Rights of way for canals and ditches.....	612
Water rights determined by priority of appropriation.....	614
Vested water rights protected.....	615
Water rights protected against other claimants.....	616

Section 2339, Revised Statutes—Continued.	
Easements granted and protected—Continued.	Page.
Time of acquiring water rights—Protection	616
Nature of water rights protected	616
Change in water rights not permitted	616
Water rights—Local laws and customs	616
State laws affecting water rights	617
Local customs and regulations of miners	617
Water-right laws in force in Alaska	618
Uses of water contemplated	619
Beneficial use sufficient	619
Water rights limited by use	619
Riparian rights—Application to public lands	619
Abandonment or forfeiture of water rights	620
Water rights not subject to patent	621
Adverse claims—Water rights	621
Federal courts—Jurisdiction	621
Section 2340, Revised Statutes	622
Application of section to existing and subsequent rights	622
Patents subject to water rights	622
Patents burdened by easements	622
Destruction of vested water rights	623
No rights as against the Government	623
Section 2341, Revised Statutes	624
Objects of section	624
Agricultural and mineral lands	624
Nature and acquisition	625
Agricultural entries protected	625
Homestead entries—Proof as to character of land	625
Agricultural claimant—No patent after mineral discovery	626
Mineral improvements—Extent and effect	626
Section 2342, Revised Statutes	627
Mineral land set apart as agricultural—Effect and proof	627
Section 2343, Revised Statutes	628
Land district—Black Hills	628
Section 2344, Revised Statutes	629
Mining rights not impaired	629
Rights acquired prior to 1872	629
Alien's rights not protected	629
Lode locators affected by Sutro Tunnel exempted	629
Section 2345, Revised Statutes	630
Application of mining statutes	630
Entry of mineral lands in Minnesota	630
Section 2346, Revised Statutes	631
Mineral lands excluded from all grants	631
ORIGINAL MINING ACT, AMENDMENT, AND REVISED ACT, PAGE 632.	
Original act	632
Original mining act—Amendment	670
Mining act—Revision	677
ORIGINAL ACT.	
14 Stat. 251, July 26, 1866	632
Mining statutes	634
Construction and codification	635
Minerals appropriated prior to statute	635

14 Stat. 251, July 26, 1866—Continued.

	Page.
Mining statutes—Continued.	
Rights of miners recognized and protected.....	636
Ownership of minerals—Relinquishment.....	637
System for disposal of mineral lands.....	637
Provisions for acquiring titles.....	638
Nature and effect as to mineral lands.....	638
Reservation of mineral lands from sale.....	638
Change of policy—Mineral lands opened to exploration.....	639
Application to mineral lands.....	639
Agricultural settlements protected.....	639
Exploration for minerals.....	640
Right to explore recognized.....	640
Subject to laws, regulations, and customs of miners.....	640
Lode claims.....	641
State laws regulating.....	641
Local laws, rules, and customs—Effect.....	642
Miners' rules—Adoption and provision.....	642
Rights subject to local rules of miners.....	643
Possessory title.....	644
Qualifications of locator.....	644
Individuals.....	644
Association of persons.....	645
Corporation.....	645
Who may question.....	645
Location on surface.....	645
Intent of statute.....	645
Surface in connection with vein.....	646
Length on lode—Form and dimensions.....	646
Irregular and excessive locations.....	647
Vein or lode subject of location.....	648
Limited to single vein or lode.....	648
Vein or lode—Meaning and definition.....	649
Location notice.....	649
Discovery.....	649
Rock in place.....	650
End lines.....	650
Required by implication.....	650
Parallelism not required.....	650
Extralateral rights.....	651
Nature and extent.....	651
Limited by end lines.....	652
Right as against patentee.....	653
Marking on ground.....	653
Assessment work.....	653
Forfeiture.....	653
Privilege of purchasing.....	653
Possession without patent.....	654
Sale of adjoining lands—Condition.....	654
Placer locations.....	655
Validity—Form and area.....	655
Possessory rights.....	655
Coal lands—Entry and sale.....	655
State and school grants.....	656
Mineral lands excepted.....	656

14 Stat. 251, July 26, 1866—Continued.	Page.
Water rights.....	656
Policy of Government as to use of water.....	656
Purpose of statute.....	656
Construction and protection of act.....	657
Vested water rights confirmed and protected.....	658
Priority of appropriation determines rights.....	658
Protection to rights subsequently acquired.....	659
Rights of way for ditches and canals.....	659
Limitation on use.....	659
Title by prescription—Statute of limitations.....	660
Excepting clause in patents.....	660
Riparian owners—Application of doctrine.....	660
Liability for injuries to settlers.....	661
Patent proceedings.....	661
Statute provides for patent.....	661
Application.....	662
Form and sufficiency.....	662
Diagram.....	662
Description—Effect of variance.....	663
Effect as an appropriation of ground.....	663
No delay in absence of adverse claim.....	663
Register's duty.....	663
Option of applicant.....	663
Requirements—Proof of compliance.....	663
Extent of ground granted to applicant—Surface and lode.....	664
Conflicting claims and grounds—Effect.....	665
Notice and plat or diagram—Posting and publication.....	665
Expenses and fees—Deposit.....	666
Effect and extent of patent as a conveyance.....	666
Conditions and exceptions inserted.....	667
Accepting patent—Effect and waiver of rights.....	667
Adverse claims.....	668
Object of determination of rights.....	668
Person to file claim and begin suit.....	668
What constitutes.....	668
Form and sufficiency.....	669
Stay of proceedings.....	669
Jurisdiction of courts.....	669
ORIGINAL MINING ACT—AMENDMENT.	
16 Stat. 217, July 9, 1870.....	670
Placer-claim statute.....	671
Purpose and effect.....	672
Codification.....	672
Provisions perpetuated.....	673
Placer claims.....	673
Locations on surveyed and unsurveyed lands.....	673
Size and area.....	674
Forms of deposit subject to location.....	674
Possessory rights.....	674
Patent—Effect and estate.....	675
Affidavits—Authority to make.....	675
Alien laws of State—Validity.....	675

	Page.
16 Stat. 217, July 9, 1870—Continued.	
Liens protected.....	675
Sutro Tunnel rights protected.....	675
State selections can not include mineral lands.....	676
Water rights.....	676
Vested rights protected—Meaning.....	676
Mining claims subject to.....	676
Preemption and homestead rights subject to water rights.....	676
MINING ACT—REVISION.	
17 Stat. 91, May 10, 1872	677
Mining statute.....	683
Construction.....	684
Codification.....	684
Improved system provided.....	684
Disposal of mineral lands provided.....	685
Revision of prior acts.....	685
Prior acts continued in force.....	685
Rights protected.....	686
Repealing effect and extent.....	687
Limitation on existing rights.....	688
Mineral lands.....	688
Valuable for minerals—Meaning.....	688
Minerals included—Generally.....	689
Particular minerals included.....	689
Salt and salines excepted.....	690
Excepted from railroad grants.....	690
Porterfield warrants not receivable.....	690
Hearing to determine character.....	690
Mining claims.....	691
Local regulations recognized and authorized.....	692
Location authorized and title permitted.....	692
What constitutes.....	692
Location on vein or lode.....	693
Surface ground with vein or lode.....	693
Discovery essential.....	694
Marking on ground.....	694
Dimensions and area.....	695
Length on lode.....	695
Width of claim.....	696
Local regulations as to area.....	696
Surface boundary lines determine locator's rights.....	696
Parallelism of end lines.....	696
Representation work.....	697
Amount required.....	697
Time of making—Extension.....	698
Work on tunnel.....	699
Extralateral rights.....	699
Location.....	700
Effect as a grant.....	700
By agent.....	700
Effect as notice.....	700
Effect as property.....	701
Locator and discoverer protected.....	701
Survey and description.....	701

17 Stat. 91, May 10, 1872—Continued.

	Page.
Surface boundary lines determine locator's rights—Continued.	
Record of location—Contents.....	701
Location notice—Posting.....	702
Possessory rights.....	702
Nature and estate.....	702
Owner may protect by suit.....	703
Evidence of title.....	703
Forfeiture.....	704
Relocation under this act—Effect.....	704
Relocation—Notice.....	705
Intersecting veins—Rights of locators.....	705
Tunnel locations.....	705
Placer claims.....	706
Purpose of act.....	706
Area—Acres.....	707
Area permitted by local regulations.....	707
Conforming to subdivisions of survey.....	708
Representation work.....	708
Reservation of known lodes.....	708
Application for patent—Showing as to known lodes.....	708
Patent—Exceptions as to known lodes.....	709
Mill sites.....	709
Location—Record.....	709
Application for patent—Nonmineral land—Proof.....	709
Application for patent.....	710
Provisions for patent and contest.....	710
Sufficiency in form and description.....	711
Place of filing.....	711
Citizenship—Proof.....	711
Corporation as applicant.....	712
Plat or diagram required—Certificate as to work.....	712
Dismissal and refiling—Effect.....	713
Publication of notice.....	713
Register must authorize.....	713
Newspaper nearest claim.....	713
All in one newspaper.....	713
Sixty days—Computation of time.....	713
Notice—Proof of posting.....	714
Adverse claims.....	714
Statute protects interests.....	715
Nature and purpose of proceedings.....	715
Who may present—Interest.....	715
Filing with register.....	716
What constitutes—Sufficiency.....	716
Time of filing.....	717
Verification—Affidavit of claimant.....	717
Verification before officer in land district.....	717
Pleading and practice—Appeal.....	717
Duty of department.....	718
Failure to file—Presumption.....	718
Contestant—Protest.....	718
Claimant required to begin suit—Time.....	718
Suit—Effect and jurisdiction.....	719
Stay of proceedings.....	719

17 Stat. 91, May 10, 1872—Continued.	
Adverse claims—Continued.	Page.
Failure to begin suit in time.....	720
Final judgment.....	720
Dismissal of suit—Effect.....	720
Abandonment of conflict ground—Effect.....	720
Patent.....	721
Rights under prior act not affected.....	721
Conveys lode and surface ground with extralateral rights.....	721
Effect of issuance on adverse claim.....	721
Effect in case of conflict ground.....	722
Vested water rights excepted.....	722
Amendments to 17 Stat. 91.....	722
18 Stat. 61, June 6, 1874.....	722
Representation work.....	722
Time extended.....	722
Performance avoids abandonment.....	723
Mining claims.....	723
State control.....	723
19 Stat. 52, May 5, 1876.....	723
Mining statute.....	723
Construction and exception of special minerals.....	723

COAL-LAND SECTIONS AND STATUTES, PAGE 724.

Coal sections.....	724
Coal statutes.....	786

COAL SECTIONS.

Section 2347, Revised Statutes.....	724
Construction of section.....	724
Reenactment of original acts.....	724
System of mining laws.....	725
Provisions for disposal of coal lands.....	725
Policy of government as to coal lands.....	726
Right of preemption and entry of coal lands.....	726
Extension of laws to Alaska.....	726
Persons qualified to purchase and enter.....	726
Qualifications.....	727
Members of association must be qualified.....	727
Corporation as an association.....	727
Corporation—Right to enter.....	727
Entry and patent.....	728
Application necessary.....	728
Proof and payment of price after application.....	729
Noncontiguous tracts not subject to entry.....	729
Legal subdivisions only subject to entry.....	730
Preference right of entry.....	730
Purchase without declaratory statement.....	731
Cash entries—Preference.....	731
Cash entry not permitted.....	732
Proceedings to compel entry.....	732
Assignee's right to make entry.....	732
Entry by one person for another under agreement.....	732
Fraudulent entry.....	733

Section 2347, Revised Statutes—Continued.

	Page.
Entry and patent—Continued.	
Combinations and conspiracy.....	733
Indictment for conspiracy—Proof.....	734
Cancellation of entry for fraud—Effect and rights.....	735
Entry by one for benefit of another—Effect and validity.....	735
Entry by one for benefit of an association—Effect.....	736
Entry for benefit of corporation.....	736
Transfer after entry—Rights of assignor and assignee.....	737
Entry under soldiers' additional homestead law.....	737
Corporation may purchase from entrymen.....	737
Areas of coal land acquired.....	738
Purpose of restrictions.....	738
Quantity permitted to one person and association.....	738
Quantity entered by corporation.....	739
Persons limited to single entry.....	739
When second entry permitted.....	740
Classification and withdrawal.....	740
Coal lands classified as mineral.....	740
Coal lands withdrawn from entry under nonmineral laws.....	741
Withdrawals—Effect on other grants.....	741
Coal lands—Valuable for mineral.....	742
Coal lands as mineral lands.....	742
Good faith and belief of purchaser.....	742
Land valuable for coal—Meaning.....	742
Determination of mineral character—Effect.....	743
Proof of presence of coal.....	743
Proof insufficient to show coal.....	744
Mineral character determined from actual production.....	745
“Known mines”—What constitutes.....	746
Opening coal mine—Ownership of coal.....	746
Return of surveyor general—Effect.....	747
Mineral and agricultural applicants.....	747
Mineral discovered after sale—Effect.....	747
Price of coal lands.....	748
Distance from railroad—Minimum price.....	748
Time when price attaches.....	748
Completed railroad—Meaning.....	749
Lands varying in distance—What controls.....	749
Protest and delay—Effect on price.....	750
Appraising and reappraising—Practice.....	750
Patent.....	750
Nature and title.....	750
Patent for lands reserved—Validity.....	750
Vacating void patent—Defense.....	750
Suit to cancel.....	750
Department decisions final—Authority of local officers.....	751
Section 2348, Revised Statutes.....	752
Coal entry.....	752
Conditions precedent.....	752
Mineral character of land—Proof.....	753
Qualifications of entryman—Proof.....	753
Single entry only permitted.....	753
Second filing permitted—Excuse.....	754

Section 2348, Revised Statutes—Continued.	
Coal entry—Continued.	
Quantity of land.....	754
Unlawful entries—Cancellation—Right to repayment.....	754
Preference right.....	754
Meaning.....	755
Prerequisites—Meaning of “mine”.....	755
Possession by applicant.....	756
Possession by agent—Right of principal.....	756
Good faith of applicant.....	756
Preference right and actual entry—Distinction.....	757
Continuance.....	757
Opening and improving coal mine.....	757
Construction of proviso.....	757
First right to purchaser.....	758
Condition precedent to enter.....	758
Labor and improvements—Good faith.....	759
Labor and improvements sufficient.....	759
Labor and improvements insufficient.....	760
Sale and transfer.....	760
Development of land—Ownership of coal.....	761
Improvements.....	761
Condition precedent—Value of improvements.....	761
Improvements on legal subdivisions—Effect.....	761
Relinquishment—Effect.....	762
Declaratory statement.....	762
Purpose and effect.....	762
Contents—Form and sufficiency.....	763
Oath of claimant—Competency of notary public.....	763
Time of filing.....	763
Failure to file—Effect.....	764
Claimant must make in person.....	764
Burden of proof.....	764
Section 2349, Revised Statutes.....	765
Construction and application of section.....	765
Preference right.....	765
Nature.....	765
Continuance by filing declaratory statement.....	766
Right to possession.....	766
Declaratory statement.....	766
Duty to make—Place of filing.....	766
Office and purpose.....	767
Filing in person—Oath of applicant.....	767
Form and substance.....	767
Time of filing.....	767
Date from possession.....	767
Sixty-day period—Commencement.....	768
Filing after township plat is filed.....	768
Time in Alaska.....	769
Time for making proof and payment.....	769
When filing is unnecessary.....	769
Proof after filing.....	769
Grounds for rejecting.....	769
Single filing only permitted—Exceptions.....	770
Notice—Failure to give—Effect.....	770

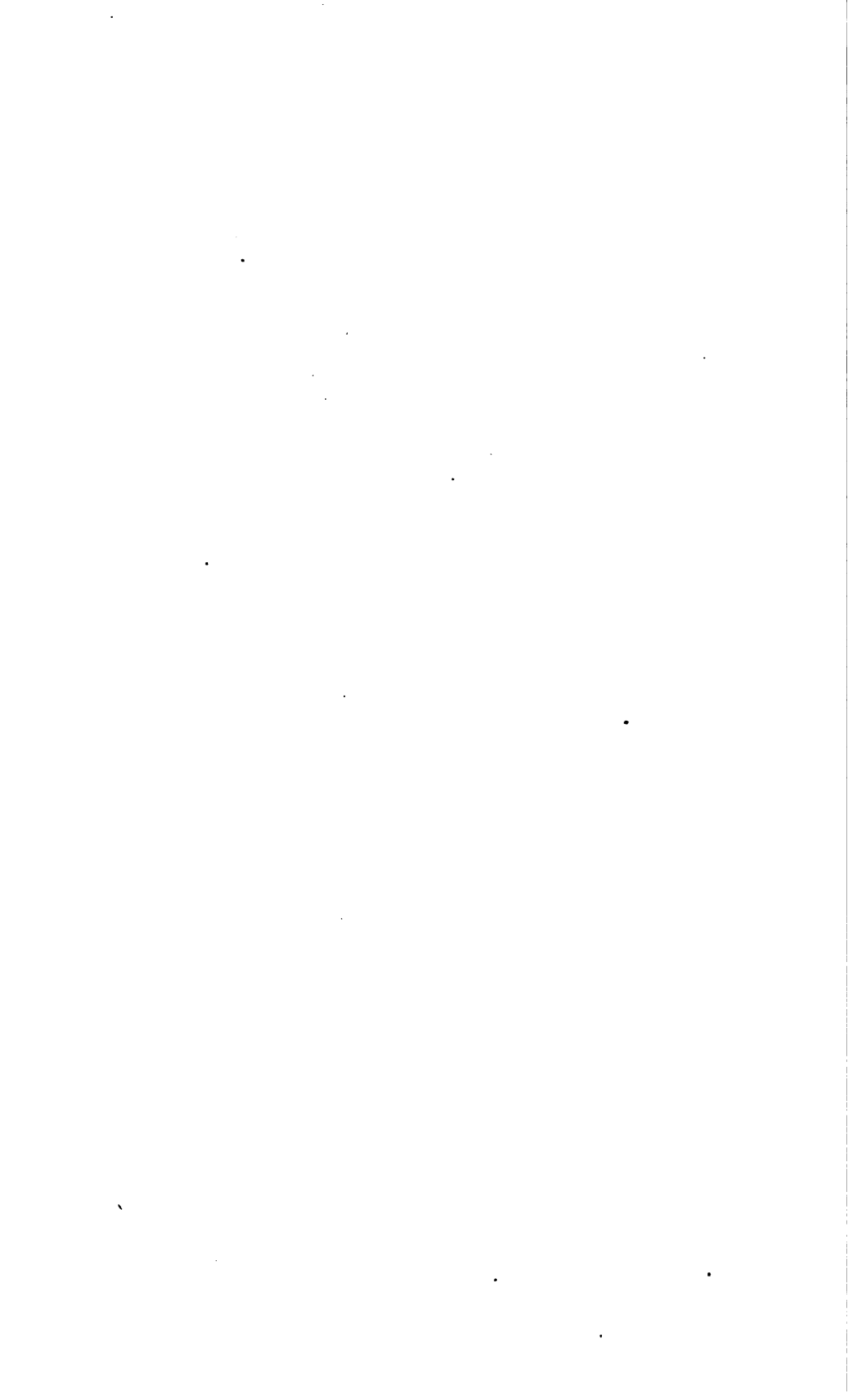
	Page.
Section 2350, Revised Statutes.....	771
Coal-land entry.....	771
Construction and application of section.....	771
Extent of prohibition.....	772
Single entry only permitted.....	772
Second filing permitted—Excuse.....	773
Entries in Alaska—Surveyed lands.....	774
Entry by agent prohibited.....	774
Corporation can not enter by officers or dummies.....	774
Conspiracy to enter.....	775
Disqualified persons.....	775
Disqualified associations.....	776
Disqualified corporations.....	776
Assignment of interest by entryman—Effect and rights.....	777
Time for making proof and payment.....	777
Failure to make proof and pay within time—Effect.....	777
Failure to complete entry—Effect of adverse claim.....	778
Time for making proof in Alaska.....	778
Declaratory statement—Purpose.....	778
Section 2351, Revised Statutes.....	779
Conflicting claims.....	779
Priority of possession—Rights.....	779
Possession and improvements.....	779
Coal-land entry.....	779
Single entry permitted—Quantity of land.....	780
Applicant's showing under oath.....	780
Assignment by entryman—Right of purchaser.....	780
Verification must be by claimant—Sufficiency.....	780
Applicant's compliance with law—Proof.....	780
Rules and regulations.....	781
Commissioner authorized to make.....	781
Force and effect of regulations.....	781
Sale of coal land by private entry.....	781
Price of land.....	781
Additional evidence permitted.....	781
Section 2352, Revised Statutes.....	782
Lands valuable for precious metals excluded from coal entry.....	782
Amendments to coal sections.....	782
31 Stat. 658, June 6, 1900.....	782
Coal-land laws extended.....	782
Coal-land laws.....	782
Extended to Alaska.....	782
Construed as system.....	782
33 Stat. 525, April 28, 1904.....	783
Coal-land laws extended.....	783
Coal-land laws as a system.....	784
Purpose of act.....	784
Temporary nature of act.....	784
Coal locations.....	784
Notice and record—Time for filing.....	784
Time for making application and survey.....	785
Payment of price—Time for making.....	785
Cash entries—Manner of securing.....	785
Single location only permitted.....	785
Adverse claims.....	785

	COAL STATUTES.	Page.
Coal lands—Disposal.....		786
13 Stat. 343, July 1, 1864.....		786
Coal lands—Disposal.....		786
Construction and purpose of act.....		786
Disposal of coal lands—Price.....		786
Policy as to minerals and salines.....		787
Coal lands are mineral lands.....		787
Coal and agricultural lands—Disposal.....		787
Coal lands excluded from preemption.....		787
Settlers on coal lands—Protection.....		788
Coal lands—Public and private sale.....		788
Coal lands—State selections.....		788
13 Stat. 529, March 3, 1865.....		788
Coal lands—Disposal—Amendment.....		788
Purpose and application of act.....		789
Right of coal miner to obtain title.....		790
Town-lot title subject to mineral rights.....		790
Railroad grant—Absence of mineral rights.....		791
17 Stat. 607, March 3, 1873.....		791
Original coal-land act.....		791
22 Stat. 487, March 3, 1883.....		792
Coal and iron lands—Alabama—Disposal.....		792
Alabama coal-land act.....		793
Application and effect.....		793
Construction and purpose of act.....		793
First and second provisos—Construction.....		794
Alabama lands.....		795
Disposal as agricultural lands.....		795
Mineral lands—Disposal.....		796
Public offering before entry.....		796
Public offering after passage of act necessary.....		797
Cancellation of entry—Public offering.....		797
Vested rights of mineral claimants protected.....		797
Lands reported as containing coal and iron—Entry.....		798
Reserved from entry and sale.....		799
State selections.....		799
Void entries.....		799
Discovery after entry—Effect.....		799
Payments refunded on erroneous entries.....		799
Homestead entry.....		800
Effect and rights.....		800
Protection.....		800
Suspension pending offer.....		801
Nonmineral lands—Offering not required.....		801
Nonmineral affidavit.....		801
Coal-mines inspection.....		802
26 Stat. 1104, March 3, 1891.....		802
Coal-mines inspection.....		802
Coal-mines inspection act.....		804
Validity of act for mine inspection.....		804
Coal mines—Power of States to inspect and regulate.....		805
Duties and liabilities of mine owners and operators.....		805
Ventilation of mines—Duties imposed.....		805
32 Stat. 631, July 1, 1902.....		806

	Page.
Coal-mines inspection—Continued.	
Coal-mines inspection—Amendment.....	806
Coal-dust accumulations.....	807
Duty to dampen mines.....	807
Miners and mine operators—Relative duties.....	807
Explosion of coal dust—Liability of mine operator.....	807
Mine-inspection acts—Appropriations from 1892 to 1910.....	807
Coal deposits reserved.....	812
35 Stat. 844, March 3, 1909.....	812
Coal lands—Coal reserved—Nonmineral selections.....	812
Coal deposits reserved.....	812
Purpose of act—Title to surface coal lands.....	813
Noncoal entryman protected—Right to restricted patent.....	813
Applicant—Benefit of act—Good faith—Hearing.....	813
Noncoal entry—Mineral lands—Determination—Burden.....	814
Withdrawal for classification—Effect and rights.....	815
Withdrawal—Effect on soldiers' claims.....	815
Selections by State—Time for determining mineral character.....	815
Oil lands withdrawn—Application of act.....	815
Agricultural entries on coal lands.....	816
36 Stat. 583, June 22, 1910.....	816
Coal lands—Agricultural entries.....	816
Coal lands—Agricultural entries.....	817
Purpose of act—Limited patent.....	817
Application of act to withdrawals for classification.....	818
Act extended to selections by State.....	818
Withdrawal for and method of classification.....	818
Withdrawal—Effect and rights of noncoal applicant.....	818
Withdrawal—Subsequent selections—Act governing.....	819
Surface entry permitted or withdrawal ordered.....	820
Withdrawals—Soldiers' rights.....	820
Nonmineral entry before withdrawal—Validity and protection.....	820
Classification—What constitutes—Effect as to price.....	820
Classification—Evidences of mineral character.....	820
Classification—Effect on prior selections—Right to limited patent.....	821
Classification—Subsequent hearing to disprove.....	821
Classification of Indian lands—Effect.....	822
Disposal after classification.....	822
Homestead application—Sufficiency and showing.....	822
Homestead patent—No cancellation.....	822
37 Stat. 90, April 23, 1912.....	822
Coal lands—Alabama—Amendment.....	822
37 Stat. 105, April 30, 1912.....	823
Coal lands—Sale—Coal reserved.....	823
Coal lands—Agricultural entries.....	823
Selections on lands withdrawn—Reservations of coal.....	823
Noncoal purchaser of surface—Reservations in patent.....	823
Selections by States—Vested rights.....	824
Application for purchase—Form and sufficiency.....	824
36 Stat. 1349, ch. 254, March 4, 1911.....	824
Coal reserved—Private patent.....	824
Transportation—Exports—Testing.....	825
37 Stat. 328, p. 338, August 22, 1912.....	825
Coal—Transportation and depots—Naval service.....	825
37 Stat. 630—March 14, 1912.....	825

Transportation—Exports—Testing—Continued.	Page.
Coal exports.....	825
Coal-testing acts—Appropriations from 1904 to 1910.....	826
37 Stat. (pt. 2) 1346—August 1, 1912.....	828
Operation of coal mine—Gebo mine—Owl Creek Coal Co.....	828
 SECTIONS RELATING TO MISCELLANEOUS MINING SUBJECTS, PAGE 829.	
Section 355, Revised Statutes.....	829
Lease of lands—Title.....	829
Section 441, Revised Statutes.....	829
Authority of Secretary of the Interior.....	829
Rules and regulations—Reasonableness.....	829
Section 452, Revised Statutes.....	830
Deputy mineral surveyor—Interest in mining claim.....	830
Section 910, Revised Statutes.....	831
Construction and effect of section.....	831
Actions for possession—Questions determined.....	831
Section 1889, Revised Statutes.....	832
Section 2238, Revised Statutes.....	833
Fee for filing adverse claim.....	833
Section 2258, Revised Statutes.....	833
Reservation of salines and minerals—Policy.....	833
Salines and salt springs.....	834
Reservation of mines and mineral lands.....	834
Known mines—What constitutes.....	835
Subsequent discovery of minerals—Effect.....	835
Patent for lands containing known mines—Effect.....	836
Sections 2275 and 2276, Revised Statutes (as amended),.....	836
Purpose of amendment.....	838
Indemnity provisions.....	838
School sections mineral—Indemnity lands.....	838
Section 2302, Revised Statutes.....	839
Scope and construction of section.....	839
Entry and purchase of mineral lands.....	839
Mineral lands excepted from homestead or preemption entry.....	840
Test as to mineral character.....	840
Determination of character of land—Evidence.....	842
Character of land once determined—Effect.....	842
Character of land open until final entry.....	843
Hearing may be ordered.....	843
Subsequent discovery of mineral—Effect.....	843
Stone lands—Agricultural entry.....	844
Agricultural lands.....	844
Not subject to mineral entry.....	844
Contest between entrymen—Burden of proof.....	845
Preference right of entry.....	846
Nonmineral affidavit.....	846
Section 2362, Revised Statutes.....	847
Entry erroneously allowed—Meaning.....	847
Repayment.....	847
When ordered.....	847
Not ordered.....	848
Section 2369, Revised Statutes.....	848
Patent—Correcting mistake.....	848

	Page.
Section 2370, Revised Statutes.....	848
Correcting mistake in patent—Conditions.....	849
Section 2395, Revised Statutes.....	849
Surveys.....	849
Notation as to mineral lands, salines, etc.—Effect.....	849
Spanish and Mexican surveys—Forms.....	849
Mineral claim connected with survey or monument.....	849
Surveyor general's duty.....	850
Object of statute.....	850
Descriptive notes—Plats—Situation of mines, etc.....	850
Failure to designate lands as mineral.....	850
Lands returned as agricultural—Effect.....	850
Title acquired after record of field notes.....	851
Report as evidence.....	851
Deputy surveyor.....	851
Duty to note mines, salines, etc.....	851
Certificate as to mineral character of land—Effect.....	851
28 Stat. 423, August 20, 1894.....	851
Section 2401, Revised Statutes, as amended.....	851
Effect of amendatory act.....	852
Survey of public lands.....	852
Survey of coal lands.....	852
28 Stat. 423, August 20, 1894.....	852
Section 2402, Revised Statutes, as amended.....	853
Deposit for survey—Refunding.....	853
28 Stat. 423, August 20, 1894.....	853
Section 2403, Revised Statutes, as amended.....	853
Payment for coal lands—Certificate of deposit.....	853
Section 2406, Revised Statutes.....	853
Public surveys—Mineral lands.....	853
Section 2449 Revised Statutes.....	853
Certified list—Effect as patent.....	854
Selection of mineral lands—Title.....	854
Section 2450, Revised Statutes.....	854
Reference to board of equitable adjudication.....	854
Good faith and substantial compliance.....	854
Insufficient compliance.....	854
Section 2457, Revised Statutes.....	855
Reference to board of equitable adjudication.....	855
Section 2471, Revised Statutes.....	855
Section 2472, Revised Statutes.....	856
Section 2473, Revised Statutes.....	856
Section 2485, Revised Statutes.....	857
Section 5412, Revised Statutes.....	857
Sections 5570–5578, Revised Statutes.....	857
Construction and validity.....	858
Guano as mineral.....	859
Discoverer of guano—Rights and title.....	859
17 Stat. 48, April 2, 1872.....	859
Section 5595, Revised Statutes.....	859
Section 5596, Revised Statutes.....	860



UNITED STATES MINING STATUTES ANNOTATED.

By J. W. THOMPSON.

REVISED STATUTES AND STATUTES AT LARGE.

- I. SECTIONS RELATING TO METALLIFEROUS MINING.
- II. ORIGINAL MINING ACT, AMENDMENT, AND REVISED ACT, p. 632.
- III. COAL-LAND SECTIONS AND STATUTES, p. 724.
- IV. SECTIONS RELATING TO MISCELLANEOUS MINING SUBJECTS, p. 829.

I. SECTIONS RELATING TO METALLIFEROUS MINING.

SECTION 2318, REVISED STATUTES.

In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

A. SYSTEM OF MINING LAWS.

- B. MINERAL LANDS—OWNERSHIP AND DISPOSAL, p. 2.
- C. MINERAL LANDS—MEANING AND TEST, p. 4.

A. SYSTEM OF MINING LAWS.

1. BASIS OF PRESENT SYSTEM.
2. CUSTOMS OF MINERS AS PART OF SYSTEM.
3. POLICY AS TO MINERAL LANDS.

1. BASIS OF PRESENT SYSTEM.

The various provisions of the original mining statutes, including the several acts of July 4, 1866 (14 Stat. 85), July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), May 10, 1872 (17 Stat. 91), February 18, 1873 (17 Stat. 465), and March 3, 1873 (17 Stat. 607), are codified and embodied within this and the following sections of the Revised Statutes.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 235.

The whole scheme in reference to mineral lands of the United States is found in these sections.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 586.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 447.

The act of May 10, 1872 (17 Stat. 91), was the foundation of the existing system of mining laws by which citizens of the United States acquired rights to the public mineral lands, and the provisions of that act are now embodied in this and the succeeding sections.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 693.

This section, with sections 2319 R. S. to 2326 R. S., are parts of the system of pre-emption laws providing for the sale and acquisition of title to the public mineral lands of the United States; and as they concern the same subject-matter they must be construed together and effect must be given to each section and provision of the law so far as possible.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 410.

2. CUSTOMS OF MINERS AS PART OF SYSTEM.

This and other sections of the mining laws recognize and sanction the custom long prevalent among the miners of the Pacific coast of organizing mining districts and adopting local laws or rules governing the location, recording, and working of mining claims, and miners are authorized to make rules and regulations in addition to but not in conflict with those prescribed by Congress.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold., etc., Min. Co., 12 Nev. 312, p. 322.

3. POLICY AS TO MINERAL LANDS.

This section is declaratory of the general policy of the Government with respect to her mineral lands.

Kansas City Min. etc., Co. v. Clay, 3 Ariz. 326, p. 330.

This section is a clear declaration that the policy of the Government is to reserve only such mineral lands as are available as such.

Richards v. Dower, 81 Cal. 44, p. 51.

Callahan v. James, 141 Cal. 291.

B. MINERAL LANDS—OWNERSHIP AND DISPOSAL.

1. RESERVATION OF MINERAL LANDS.
2. RESERVED FOR STATE SELECTIONS.
3. MANNER OF ACQUIRING TITLE TO MINERAL LANDS.
4. MINERAL LANDS ACQUIRED ONLY UNDER MINING LAWS.
5. MINERAL LANDS NOT DISPOSED OF AS AGRICULTURAL LANDS.

1. RESERVATION OF MINERAL LANDS.

This section declares generally that lands valuable for minerals shall be reserved from sale except as otherwise directed by law.

Deffeback v. Hawke, 115 U. S. 392, p. 402.

Black v. Elkhorn Min. Co., 163 U. S., 445, p. 447.

Northern Pacific R. Co. v. Barden, 46 Fed. 592, pp. 603, 610.

United States v. Central Pacific R. Co., 84 Fed. 218, p. 220.

Cadle, In re, 3 L. D. 173.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 15.

Meiklejohn v. Hyde, 42 L. D. 144, p. 145.

Kemp v. Starr, 6 C. L. O. 3, p. 4.

Hooper, In re, 8 C. L. O. 120.

Twin Lake Consol., etc., Min. Co., In re, 10 C. L. O. 292, p. 293.

Alabama, In re, 6 L. D. 493.

Lee Doon v. Tesh, 68 Cal. 43, p. 44.

Madison v. Octave Oil Co., 154 Cal. 768, p. 771.

Van Ness v. Rooney, 160 Cal. 131, p. 140.

Silver Bow, etc., Min. Co. v. Clark, 5 Mont. 378, p. 411.

Noyes v. Clifford, 37 Mont. 138, p. 142.

Merrill v. Dixon, 15 Nev. 401, p. 407.

City of Deadwood v. Whittaker, 12 S. Dak. 515, p. 522.

Diamond Coal etc. Co. v. United States, 233 U. S. 236, p. 249.

See United States v. San Pedro & Canon, etc., Co., 4 N. Mex. 225, p. 294.

Hawke v. Deffeback, 4 Dak. 20, p. 27.

The only lands excluded from any but mineral entry are lands valuable for minerals or such as contain valuable mineral deposits.

United States v. Plowman, 216 U. S. 372, p. 374.

Davis v. Weibbold, 139 U. S. 507, p. 516.

Creede & Cripple Creek Min. Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 345.

The reservation in this section has been in force since December 1, 1873, at least, and no title to public land known to be valuable for its minerals can be acquired in Montana except under the mining laws.

Bourquin, In re, 27 L. D. 289, p. 290.

See *Deffeback v. Hawke*, 115 U. S. 392.

The mineral lands of the United States are expressly reserved from sale except as otherwise provided by law, and the rule is that no title from the United States to land known at the time of sale to be valuable for mineral can be obtained in any way other than as prescribed by the laws expressly authorizing the sale of such lands.

Walker, In re, 36 L. D. 495, p. 496.

See *Deffeback v. Hawke*, 115 U. S. 392, p. 404.

Mineral lands are reserved from sale except as otherwise expressly directed by law, and the word "expressly" has significance, as general legislation for disposal of public lands has no application to mineral lands unless they are in terms referred to; and in dealing with entries of nonmineral character Congress is not supposed to legislate as to mineral lands or mineral entries.

Herman v. Chase, 37 L. D. 590, p. 591.

Pursuant to this section it has usually been specifically provided in the various grants made by Congress that mineral lands should be exempted and the exemption uniformly embraces all lands known to be mineral in character at the date title thereto would definitely vest.

South Dakota v. Delicate, 34 L. D. 717, p. 721.

Mineral lands reserved from sale under this section may be reserved for military purposes by order of the President.

Fort Maginnis, In re, 8 C. L. O. 137.

Reservation of Land, In re, 17 Opinions Atty. Gen. 230, p. 233.

The public mineral lands are reserved from sale except as directed, but are not reserved from public uses.

City of Deadwood v. Whittaker, 12 S. Dak. 515, p. 522.

See *Murray v. City of Butte*, 7 Mont. 61.

2. RESERVED FOR STATE SELECTIONS.

An application by a State for indemnity school selections should be rejected where the lands have been returned as mineral in character, unless the State has complied with the regulations requiring notice and given affirmative proof as to the character of the land.

California, In re, 22 L. D. 294.

This section is only a concrete statement of prior statutes reserving mineral lands from the consequences of the grant made in such prior acts, but it does not declare that mineral lands located in a given State may not be selected in accordance with the terms and provisions of the original act admitting such State into the Union.

Alabama, In re, 6 L. D. 493, p. 499.

3. MANNER OF ACQUIRING TITLE TO MINERAL LANDS.

By this and the following section Congress has provided the manner in which the Government title to mineral lands may be acquired.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 37

This and succeeding sections provide for the acquisition of title to unappropriated mineral lands belonging to the United States and states the mode of procedure in acquiring such title, and entrusts the disposal of mineral as well as all other lands to the Land Department.

Old Dominion Copper Min., etc., Co., v. Haverly, 11 Ariz. 241, p. 247.

4. MINERAL LANDS ACQUIRED ONLY UNDER MINING LAWS.

Land known to be valuable for gold, silver, cinnebar, and copper can only be acquired pursuant to the mining laws.

Townsite of Deadwood, In re, 8 C. L. O. 18, p. 19.

Largey, In re, 17 C. L. O. 3, p. 4.

Only lands valuable for mineral are subject to appropriation as mining claims.

Montana Central R. Co. v. Migeon, 68 Fed. 811, p. 814.

Only mineral lands belonging to the United States are open to exploration, occupation, location, and purchase.

Logan, In re, 29 L. D. 395.

Lands valuable for mineral are not subject to private entry under this section.

Bush, In re, 11 L. D. 216.

5. MINERAL LANDS NOT DISPOSED OF AS AGRICULTURAL LANDS.

It is not the policy of the Government to dispose of its mineral lands as agricultural or in any other way than as mineral lands, to be devoted to the pursuit of mining as provided in the mining statutes.

Mining Co. v. Consolidated Min. Co., 102 U. S. 167, p. 174.

Northern Pacific R. Co. v. Barden, 46 Fed. 592, p. 613.

Wood, In re, 10 C. L. O. 225.

If lands are valuable for mineral and are knowingly purchased as agricultural lands, the patent issued by the Government conveys no title and may be set aside in an action brought on behalf of the United States.

United States v. Culver, 52 Fed. 81, p. 83.

Lands valuable for mineral within the meaning of this section, and with knowledge of their mineral character, can not be entered by cash entry as agricultural lands, as they are not liable to purchase as such.

United States v. Culver, 52 Fed. 81, p. 83.

Diamond Coal etc. Co. v. United States, 233 U. S. 236, p. 238.

Title to nonknown mineral land can not be secured under agricultural entry.

Murray v. White, 42 Mont. 423, p. 439.

Mineral lands are reserved from entry and settlement by the preemption and homestead statutes, but open to purchase by citizens of the United States.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 304.

C. MINERAL LANDS—MEANING AND TEST.

1. APPLICATION OF TERM "MINERAL."

2. EXTENT OF MINERAL DEPOSITS CONTEMPLATED BY MINING LAWS.

3. VALUABLE MINERAL DEPOSITS.

a. QUESTION OF FACT.

b. PLEADING AND PROOF.

4. ENTRIES FOR AGRICULTURAL PURPOSES—EFFECT.
5. MINERAL AND AGRICULTURAL CONTESTANTS—BURDEN OF PROOF.
6. PARTICULAR MINERAL SUBSTANCES INCLUDED IN SECTION.

1. APPLICATION OF TERM "MINERAL."

The term "mineral" is not applicable to the vast tracts of country in the mining States which contain precious metals in small quantities but not to a sufficient extent to justify the expense of their exploitation.

Davis v. Weibbold, 139 U. S. 507, p. 519.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 815.

The term "lands valuable for minerals" and the term "valuable mineral deposits" of section 2319 R. S., and the word "mine," used in section 2323 R. S., the expression "valuable deposits" in section 2325, R. S., and the phrase "mines of gold" in section 2392 R. S., all refer to substantially the same thing and embrace both veins or lodes and placers.

Hawke v. Deffeback, 4 Dak. 20, p. 33.

The term "lands valuable for minerals," as used in this statute, has not always been strictly applied to natural mineral substances by the officers of the Land Department.

Johnson v. California Lustral Co., 127 Cal. 283, p. 286.

2. EXTENT OF MINERAL DEPOSITS CONTEMPLATED BY MINING LAWS.

The nature and extent of the deposit of minerals which will make a tract of land "mineral" or constitute a mine thereon within the meaning of this section has not been judicially determined.

United States v. Reed, 28 Fed. 482, p. 486.

The exceptions of mineral land from preemption and settlement as contemplated by the statutes do not exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction, and known to be such at the date of the grant. The term "mineral" in the sense of this statute is not applicable to lands which contain precious metals in small quantity but not to a sufficient extent to justify the expense of their exploitation.

Davis v. Weibbold, 139 U. S. 507, pp. 519, 524.

United States v. Plowman, 216 U. S. 372, p. 374.

Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 600.

United States v. Central Pac. R. Co. 84 Fed. 218, p. 220.

To bring land within the terms of this section it must at least be shown that it contains metals in quantities sufficient to render it available and valuable for mining purposes.

Davis v. Weibbold, 139 U. S. 507, p. 520.

Alford v. Barnum, 45 Cal. 482.

Cleary v. Skiffich, 28 Colo. 362, p. 368.

Merrill v. Dixon, 15 Nev. 401, p. 407.

See *United States v. Diamond Coal & Coke Co.*, 191 Fed. 786, p. 791.

Lands valuable for mineral are lands which it will pay to mine by the usual modes of mining.

Townsite of Deadwood, In re, 8 C. L. O. 153, p. 155.

The statute does not reserve any land from entry as a homestead because some one works some portion of it as mineral ground without any reference to the fact of whether

there are any paying mines or not, but nothing short of known mines on the land capable of being worked at a profit is sufficient to prevent such entry.

United States v. Reed, 28 Fed. 482,
Peirano v. Pendola, 10 L. D. 536, p. 538.

Nothing short of known mines on lands ordinarily capable of being worked at a profit, as compared with any gain or profit that may be derived therefrom when entered under the homestead law, is sufficient to prevent such entry.

United States v. Reed, 28 Fed. 482, p. 487.

The term "mineral" as used in this section embraces only such lands as contain valuable deposits of metals and other substances which give the same a special value greater than that of land containing limestone deposits in any of its forms.

Duval, In re, 7 C. L. O. 148.

3. VALUABLE MINERAL DEPOSITS.

a. QUESTION OF FACT.

It may be an open question in any case whether a location includes lands valuable for minerals or whether it is based upon a barren seam or fissure.

Montana Central R. Co. v. Migeon, 68 Fed. 811, p. 814.

Whether or not lands are valuable for mineral and are reserved from sale under this section is a question of fact to be determined by proofs, without regard to the former nonmineral designation of such lands.

Scogin v. Culver, 7 C. L. O. 23.
Montague v. Dobbs, 10 C. L. O. 88.

b. PLEADING AND PROOF.

In a contest as to whether or not lands are known mineral lands it is sufficient as a matter of pleading to allege that such lands never did contain and do not now contain known minerals in lode deposits of any value sufficient to justify expenditure of time or money in efforts to extract the same.

O'Keefe v. Cannon, 52 Fed. 898, p. 899.

In a contest as to whether lands contain mineral it is proper to prove that at the time of the entry the lands were not known to contain mineral.

Northern Pacific R. Co. v. Barden, 46 Fed. 592, p. 600.

In an application for a patent for a mining claim the proofs must show that the land is valuable for minerals and must show that it would pay to mine such lands by the usual methods of mining.

Woodruff v. McGinness, 10 C. L. O. 88.

A surveyor general's return as to the mineral character of land is not overcome by evidence that is conflicting as to whether the minerals exist in paying quantities.

North Leadville v. Searle, Copp's Min. Lands 274.
Searl Placer, In re, 12 C. L. O. 310.

4. ENTRIES FOR AGRICULTURAL PURPOSES—EFFECT.

Mere mineral prospect or hope can not keep lands from being entered for agricultural purposes.

United States v. Reed, 28 Fed. 482, p. 487.

The courts approve the rule of the Land Department to the effect that if the land is worth more for agriculture than mining, it is not mineral land, although it may contain some measure of gold or silver.

Davis v. Weibbold, 139 U. S. 507, p. 522.
United States v. Reed, 28 Fed. 482.
Dughi v. Harkins, 2 L. D. 721.

Where land has been explored and worked by miners for many years and finally abandoned, it can not thereafter be assumed to be lands valuable for mineral within the meaning of this statute where it has been preempted and used for agricultural purposes.

United States v. Reed, 28 Fed. 482, p. 487.

Where land is shown to be more valuable for mineral than for agricultural purposes there is no authority for a segregation survey.

Quigley v. California, 24 L. D. 507.

Where a mineral claimant fails to make proper and timely objection to an agricultural entry the Land Department must assume that none exists.

Caribou Lode, In re, 24 L. D. 488, p. 489.

5. MINERAL AND AGRICULTURAL CONTESTANTS—BURDEN OF PROOF.

In a contest between mineral and agricultural claimants to prevent the issuance of a patent to the agricultural entryman the burden of proof is upon the mineral claimant to show affirmatively the mineral character of the land and to prove that it is valuable for minerals within the meaning of this section.

Small v. Howell, 9 C. L. O. 164.

The burden of proof is upon a mineral claimant to show that land is more valuable for mineral therein contained than for agricultural purposes, where such land is not withdrawn as mineral, as contemplated in this section, or returned as such by the surveyor general.

Hunt v. Bartholomew, 10 C. L. O. 293.

In controverted cases as to whether land is agricultural or mineral in character the rule of the Land Department is that it will be considered agricultural or mineral according as it is more valuable for mining or agricultural purposes, and its determination of that fact based upon knowledge obtained at the time as to the character of the land is conclusive.

Barden v. Northern Pacific R. Co., 154 U. S. 288, p. 329.

Northern Pacific R. Co. v. Soderberg, 86 Fed. 49, p. 50.

See Brownfield v. Bier, 15 Mont. 403, p. 415.

United States v. Lavenson, 206 Fed. 755, p. 763.

The rule of the Land Department is that if the land is worth more for agricultural than for mining it is not mineral land within the meaning of this section, though it may contain some measure of gold or silver or both.

United States v. Reed, 28 Fed. 482, p. 486.

In determining whether land is more valuable for mining than for agriculture the advantages of hydraulic mining can not be considered where there is no available water for that purpose.

United States v. Reed, 28 Fed. 482, p. 486.

In determining whether land is more valuable for its mineral deposits than for agriculture no account can be taken of the profits that would or might result from mining under other and more favorable circumstances and conditions than are actually existing.

United States v. Reed, 28 Fed. 482, p. 486.

The statutory reservation of lands, valuable for minerals, from sale, except under the mining laws, is operative as between contending mineral and agricultural claimants only as the lands are known to be more valuable for their minerals at the date of the certificate of final entry.

Leach v. Potter, 24 L. D. 573, p. 574.

6. PARTICULAR MINERAL SUBSTANCES INCLUDED IN SECTION.

See sec. 2319, p. 18.

The term "lands valuable for minerals" as used in this and succeeding sections applies to all lands chiefly valuable for nonmetalliferous deposits, such as alum, asphaltum, borax, guano, diamonds, gypsum, marble, mica, slate, amber, petroleum, limestone, and building stone, rather than for agricultural purposes..

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 205.

See Northern Pacific R. Co. v. Soderberg, 188 U. S. 526, p. 534.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 240.

The presence of a thick vein of coal in public land does not render its character mineral when shown not to be susceptible of mining at a profit.

Johnson v. California Lustral Co., 127 Cal. 283, p. 286.

Green v. Grumbly (May 20, 1896, unreported).

Lands containing deposits of gypsum, which is of similar formation to limestone, are not subject to disposal under the mining act.

Duvall, In re, 7 C. L. O. 148.

Hooper, In re, 8 C. L. O. 120.

Lands valuable for deposits of phosphate are to be classed as mineral lands.

Gary v. Todd, 18 L. D. 58.

Florida Gen. etc., R. Co., In re, 26 L. D. 600, p. 601.

See Alldritt v. Northern Pac. R. Co., 25 L. D. 349.

Union Oil Co., In re, 25 L. D. 351.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 241.

Johnson v. California Lustral Co., 127 Cal. 283, p. 287.

At the time of the passage of this act Congress did not have in contemplation the reservation of lands containing petroleum under the designation of mineral land.

Union Oil Co., In re, 23 L. D. 222, p. 227.

See Dunham v. Kirkpatrick, 101 Pa. St. 36.

Gill v. Westor, 110 Pa. St. 312.

Land containing a valuable deposit of gypsum cement is not subject to agricultural entry.

Phifer v. Heaton, 27 L. D. 57, p. 58.

Lands valuable for rock called lustral or paint stone, worked by the ordinary process of mining, are held to be lands valuable for mineral within the meaning of this section.

Johnson v. California Lustral Co., 127 Cal. 283, p. 285.

SECTION 2319, REVISED STATUTES.

All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

This section is the same as section 1, act of May 10, 1872 (17 Stat. 91), p. 677.

See 14 Stat. 251, sec. 1, p. 632; 17 Stat. 91, sec. 1, p. 677.

A. OWNERSHIP OF MINERAL LANDS—MINING PERMITTED.

B. DISPOSAL OF MINERAL LANDS, p. 11.

C. MINING LOCATIONS, p. 21.

D. QUALIFICATIONS OF LOCATORS, p. 26.

E. VEIN OR LODE—DEFINITION, p. 32.

F. MINING CLAIM AS PROPERTY, p. 32.

G. MINERAL AND AGRICULTURAL CLAIMANTS—BURDEN OF PROOF, p. 33.

H. POSSESSION OF MINING CLAIM—JURISDICTION OF FEDERAL COURTS, p. 34.

I. PATENT—EFFECT AS A CONVEYANCE, p. 34.

A. OWNERSHIP OF MINERAL LANDS—MINING PERMITTED.

1. GOVERNMENT OWNERSHIP.

2. MINING ON PUBLIC LANDS PERMITTED.

3. POLICY TO ENCOURAGE MINING.

1. GOVERNMENT OWNERSHIP.

Under the common law of England mines of gold and silver were the exclusive property of the crown and did not pass under a grant by the king under the general designation of lands or mines.

Hicks v. Bell, 3 Cal. 219.

See United States v. San Pedro & Canon, etc., Co., 4 N. Mex. 225, p. 294.

Queen v. Earl of Northumberland, 1 Plow. 310.

The statutes asserting paramount title to the United States to mineral lands are in harmony with the laws and practices of other countries on the same subject.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 304.

While the superior title to mineral lands is in the United States and no state or territorial law can effect in any manner this superior title or control the United States in its disposition of such lands, yet by a valid location of a mining claim the locator acquires a qualified ownership that is recognized as property.

Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 563.

2. MINING ON PUBLIC LANDS PERMITTED.

Congress has by tacit consent permitted the mining of ores containing precious metals from government lands without receiving any compensation and without requiring the miners to buy or pay for such land.

Forbes v. Gracey, 94 U. S. 762, p. 763.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 16.

Fort Maginnis, In re, 1 L. D. 552, p. 554.

The license given a locator by this section to occupy and work the mining ground is sufficient for that purpose until withdrawn by Congress, without purchasing it.

United States v. Nelson, 27 Fed. Cas. 86.

The mining laws do not authorize the location of a mining claim upon any but public lands and such a location made upon lands held in private ownership can have no validity.

Riley, In re, 33 L. D. 68, p. 70.

While the title to veins and lodes of minerals may remain in the United States, yet if such veins and lodes are discovered within lands or lots held under a town site patent, they are not open to occupation and purchase because the same are not situated upon lands belonging to the United States, as it is only lands belonging to the United States which are subject to location under the mining laws.

Williams, In re, 9 C. L. O., 147.

This and other sections of the statute are said to be the charter of the miners' rights upon the public domain.

Shreve v. Copper Bell Min. Co., 11 Mont. 309, p. 332.

There is no limitation or restriction in this section as to the kind or class of mineral deposits which are thus made subject to exploration and purchase and where mineral deposits are found in the public lands they are declared to be free and open to exploration and purchase.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 241.

3. POLICY TO ENCOURAGE MINING.

By this statute Congress has declared it to be the policy of the country to encourage the development of its mineral resources, and it is a declaration of the freedom of mineral land to exploration and occupation.

Heydenfeldt v. Daney, 93 U. S. 634, p. 638.

Steel v. Smelting Co., 106 U. S. 447, p. 449.

McKinley v. Wheeler, 130 U. S. 630, p. 632.

Stinchfield v. Pierce, 19 L. D. 12, p. 14.

See Creede & Cripple Creek, etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 342.

Overgaard v. Westerberg, 3 Alaska 168, p. 174.

Cascaden v. Bortolis, 3 Alaska 200, p. 206.

Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 659.

Whiting v. Straup, 17 Wyo. 1, p. 25.

The policy of the Government has been to recognize the rights of discoverers of valuable mineral deposits to appropriate for mining purposes the ground embracing their discoveries and to take therefrom the ores without rendering any account to the Government therefor.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 109.

It has been the general policy of the Government to reserve mineral lands from entry and sale except as otherwise specifically provided.

Crafts, In re, 36 L. D. 138, p. 139.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233.

The object of the mining laws was to develop the mining resources of the United States.

Yard, *In re*, 38 L. D. 59, p. 64.

B. DISPOSAL OF MINERAL LANDS.

1. ACQUISITION UNDER PRIOR MINING LAWS.
2. LAND DEPARTMENT CHARGED WITH DISPOSAL OF MINERAL LANDS.
3. MINERAL LANDS OPEN TO PURCHASE.
4. ACQUISITION SUBJECT TO CUSTOMS OF MINERS.
 - a. EFFECT OF SECTION ON REGULATIONS AND CUSTOMS.
 - b. REGULATIONS AND CUSTOMS—OPERATION AND EXTENT.
5. MINERAL LANDS IN RESERVATIONS EXCLUDED.
6. LANDS VALUABLE FOR MINERALS.
 - a. MEANING AND PROOF.
 - b. PROOF INSUFFICIENT TO SHOW MINERAL CHARACTER.
7. VARIETY OF MINERALS INCLUDED.
 - a. GENERAL PRINCIPLES.
 - b. SPECIFIC MINERALS INCLUDED.
 - c. SPECIFIC MINERALS NOT INCLUDED.

1. ACQUISITION UNDER PRIOR MINING LAWS.

The acts of July 26, 1866 (14 Stat. 251), and of May 10, 1872 (17 Stat. 91), both provided for the acquisition of title by patent to mineral lands. The first act applied to such as constituted lode claims, and the second to such as constituted placer claims.

Steel v. Smelting Co., 106 U. S. 447, p. 450.

The act of July 26, 1866 (14 Stat. 251), remained in force only six years and was then superseded by the act of May 10, 1872 (17 Stat. 91), the substance of which is embodied in the various sections of the revised statutes.

Del Monte Min. etc. Co. v. Last Chance Min. etc. Co., 171 U. S. 55, p. 65.

The original act of July 26, 1866 (14 Stat. 251), declares that all mineral deposits on public lands are free and open to exploration and the lands in which they are found are open to occupation and purchase by properly qualified persons.

Steel v. Smelting Co., 106 U. S. 447, p. 449.

Lands chiefly valuable for mineral deposits of whatever kind or nature may be properly disposed of under mining laws.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 241.

2. LAND DEPARTMENT CHARGED WITH DISPOSAL OF MINERAL LANDS.

The Land Department is charged with the duty of disposing of the public lands in the manner provided by law and its officers must determine the character of the land and dispose of it only under the law applicable, and nonmineral land can not be disposed of under the mineral laws.

Ferrell v. Hoge, 29 L. D. 12, p. 13.

Lands containing mineral deposits and declared to be open to exploration and purchase belong to the United States, and until the legal title has passed these lands are within the jurisdiction of the Land Department, and while equitable rights may be established yet Congress retains a certain measure of control.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 70.

3. MINERAL LANDS OPEN TO PURCHASE.

Lands known to be valuable for minerals are subject to disposition by the United States under the mining laws only.

- Deffeback v. Hawke, 115 U. S. 392, p. 406.
 Colorado Coal, etc., Co. v. United States, 123 U. S. 307, p. 327.
 Davis v. Weibbold, 139 U. S. 507.
 Walker v. Southern Pacific R. Co., 24 L. D. 172, p. 176.
 Coleman v. McKenzie, 28 L. D. 348, p. 352.
 See Mining Co. v. Consolidated Min. Co., 102 U. S. 167, p. 174.
 Smith v. Hill, 89 Cal. 122, p. 129.

Lands valuable for mineral are lands which it will pay to mine by the usual modes of mining.

- Caledonia Min. Co. v. Rowen, 2 L. D. 714, p. 719.
 Cutting v. Reininghaus, 7 L. D. 265, p. 267.
 Duffy Quartz Mine, In re, 18 L. D. 259, p. 261.
 See Deffeback v. Hawke, 115 U. S. 392.
 Callahan v. James, 141 Cal. 291.
 Richards v. Dower, 81 Cal. 44.
 Smith v. Hill, 89 Cal. 122.

This section provides for exploration and purchase of mineral deposits belonging to the United States.

Lockhart v. Johnson, 181 U. S. 516, p. 519.

The Government of the United States has opened all minerals and public mineral lands to exploration and purchase, and, as a reward to the successful explorer, grants to him the right to extract and possess the mineral within certain prescribed limits.

- Croede & Cripple Creek Min. Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 345.
 Erhardt v. Boaro, 113 U. S. 527, p. 535.
 Deffeback v. Hawke, 115 U. S. 392, p. 402.
 Parley's Park Min. Co. v. Kerr, 130 U. S. 256, p. 261.
 Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 586.
 United States v. Plowman, 216 U. S. 372, p. 374.
 Black v. Elkhorn Min. Co., 49 Fed. 548, p. 550.
 Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 460.
 Sharkey v. Candiani, 48 Oreg. 112, p. 122.
 Wright v. Lyons, 45 Oreg. 167, p. 172.
 See Ducie v. Ford, 138 U. S. 587, p. 591.
 South End Min. Co. v. Tinney, 22 Nev. 19, p. 62.

By this section all minerals and all public mineral lands, both surveyed and unsurveyed, are declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become such, under regulations prescribed by law and according to local customs and rules of miners.

- O'Reilly v. Campbell, 116 U. S. 418.
 Davis v. Weibbold, 139 U. S. 507, pp. 515, 516.
 Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 63.
 North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 526.
 Billings v. Aspen Min., etc., Co., 52 Fed. 250, p. 251.
 Johnston v. Morris, 72 Fed. 890, p. 897.
 Meydenbauer v. Stevens, 78 Fed. 787, p. 789.
 Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 49.
 Lone Jack Min. Co. v. Megginson, 82 Fed. 89, p. 93.
 McFadden v. Mountain View Min., etc., Co., 87 Fed. 154, p. 155.
 McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 673.
 Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 13.
 Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 204.
 McEvoy v. Megginson, 29 L. D. 164.
 Yard, In re, 38 L. D. 59, p. 61.
 Meiklejohn v. Hyde, 42 L. D. 144, p. 145.
 Hooper, In re, 8 C. L. O. 120.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 320.
 Cook v. Johnson, 3 Alaska 506, p. 530.
 Altoona Quicksilver Min. Co. v. Integral, etc., Co., 114 Cal. 100, p. 104.
 Madison v. Octave Oil Co., 154 Cal. 768, p. 777.
 Bernard v. Parmelee, 6 Cal. App. 537, p. 539.
 Noyes v. Clifford, 37 Mont. 138, p. 148.
 Hand v. Cook, 29 Nev. 518, p. 530.
 Bay v. Oklahoma, etc., Min. Co., 13 Okla. 425, p. 430.
 Allen v. Dunlap, 24 Oreg. 229, p. 233.
 See Lohman v. Helmer, 104 Fed. 178, p. 181.
 Hanson v. Craig, 170 Fed. 62.
 Ferris v. McNally, 45 Mont. 20, p. 27.
 Nash v. McNamara, 30 Nev. 114, p. 128.

The entire mining statute contemplates that the right or privilege of exploration and occupation is given as preliminary to a purchase by the locator, and that if it shall be ascertained that the location contains valuable mineral deposits he will proceed without unnecessary delay to obtain a patent therefor by making proof of location and labor thereon and payment of the purchase price.

United States v. Nelson, 27 Fed. Cas. 86.

It is only lands valuable for minerals and belonging to the United States that are open to purchase and which may be protected for such mineral deposits under the mining laws.

Richmond Silver Min. Co. v. Davey, 10 C. L. O. 291.

Lands within the boundaries of a Mexican or Spanish grant in New Mexico are open to exploration and purchase within the meaning of this section of the statute.

Lockhart v. Wills, 9 N. Mex. 344, pp. 347, 352.

Lockhart v. Leeds, 10 N. Mex. 568, p. 594.

This section provides for the disposition alike of lodes and veins, and of placer deposits.

Townsite Clause, In re, 5 L. D. 256, p. 257.

Mutchmor v. McCarty, 149 Cal. 603, p. 610.

This section is not broad enough to include lands lying below ordinary high tide.

Alaska Gold Min. Co. v. Barbridge, 1 Alaska 311, p. 315.

Mineral lands are not subject to acquisition under the homestead laws.

Diamond Coal, etc., Co. v. United States, 233 U. S. 236, p. 238.

4. ACQUISITION SUBJECT TO CUSTOMS OF MINERS.

a. EFFECT OF SECTION ON REGULATIONS AND CUSTOMS.

This section declares that all mineral deposits are free and open to exploration and purchase under regulations prescribed by law and according to local customs or rules of miners in the several mining districts.

Chapman v. Toy Long, 5 Fed. Cas. 497.

Local customs or rules of miners must be complied with the same as United States laws.

Strickland v. Commercial Min. Co., 55 Oreg. 48, p. 51.

Congress, by declaring that all valuable mineral deposits are free and open to exploration and purchase, thereby gave the sanction of law to the regulations which the miners in any locality might stipulate for their several occupations and working of mining claims; but this did not give to them authority to determine how the title to the land itself might be acquired.

Benson Min., etc., Co. v. Alta Min. Co., 145 U. S. 428, p. 431.

All existing rights to the public lands were recognized to the extent that they had attached or been acquired under local rules or customs not inconsistent with the laws of the United States.

Cleary v. Skiffich, 28 Colo. 362, p. 371.

Congress by express enactment has sanctioned and continued in force all local laws and customs not inconsistent with the laws of the United States.

Schultz v. Keeler, 2 Idaho 305, p. 309 (333).

See *Schultz v. Keeler*, 2 Idaho 532 (568).

It is a fair presumption that Congress by this section intended to affirm and continue in force the well-known custom in the mining States of the location of mining claims by agents.

Schultz v. Keeler, 2 Idaho 305, p. 309 (333).

See *Schultz v. Keeler*, 2 Idaho 532, p. 534 (568).

Rush v. French, 1 Ariz. 99, p. 116.

Murley v. Ennis, 2 Colo. 300.

Boucher v. Mulver Hill, 1 Mont. 306, p. 310.

A custom limiting placer claims in a particular locality to 80 rods in length is not in conflict with the laws of Congress and can be regarded as reasonable.

Rosenthal v. Ives, 2 Idaho 244, p. 249.

See *Smelting Co. v. Kemp*, 104 U. S. 636, p. 652.

Erhardt v. Boaro, 113 U. S. 527, p. 535.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.

b. REGULATIONS AND CUSTOMS—OPERATION AND EXTENT.

The fact that a mining rule was adopted and kept on foot as the law for a considerable period of time would be prima facie evidence that it was in force at one time and being in force once a presumption would arise that it continued in force until it is shown to have fallen into disuse and another practice generally adopted and followed.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 530.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 675.

Tioga Consol. Min. Co., In re, 8 C. L. O. 88, p. 89.

The existence of a rule, regulation, or custom among miners as to the extent of a mining claim is a question of fact to be found by the jury from all the evidence in a case.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 528.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 674.

A custom reasonable in itself and generally observed will prevail against a written mining law which has fallen into disuse, and whether or not such a mining law is in force at any given time is a question of fact for the jury.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 529.

The mere violation of a mining rule by a few persons would not abrogate it where it is generally observed. Its disregard and disuse must become so extensive as to show that in practice in the particular locality it has become generally disused.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 530.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 675.

See *Tioga Consol. Min. Co.*, In re, 8 C. L. O. 88, p. 89.

No distinction is made by the statute of California between a custom or usage the proof of which must rest in parol and a regulation which may be adopted by a miners' meeting and embodied in a written local law. Such a law does not, like a statute, acquire validity by the mere enactment but from the customary obedience and acquiescence of the miners following its enactment, and it becomes void whenever it falls into disuse or is generally disregarded.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 528.

5. MINERAL LANDS IN RESERVATIONS EXCLUDED.

Mineral lands included within the limits of a military reservation are not open to exploration and purchase under this section.

Fort Maginnis, In re, 1 L. D. 552, p. 553; 8 C. L. O. 137.
Reservation of Land, In re, 17 Op. Atty. Gen. 230, p. 233.

Where rights have attached to mineral land in favor of the locator of a mining claim the land during the continuance of the claim becomes by force of the mining laws appropriated to the specific purpose of development and working of the mine located, and it can not during such time be set apart by the Executive for public uses.

Fort Maginnis, In re, 1 L. D. 552, p. 554.
Fort Maginnis, In re, 8 C. L. O. 137.

6. LANDS VALUABLE FOR MINERALS.

a. MEANING AND PROOF.

This section makes all valuable mineral deposits subject to occupation and purchase under the mining laws.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 15.

To constitute a valuable deposit within the meaning of this section there must be proof to show a deposit of substantial value.

Royal K Placer, In re, 13 L. D. 86, p. 89.
See United States v. Iron Silver Min. Co., 128 U. S. 673.

Land must appear as mineral in character as a present fact and from actual production of mineral.

Davis v. Weibbold, 139 U. S. 507, p. 520.
Dughi v. Harkins, 2 L. D. 721.
Rucker v. Knisley, 14 L. D. 113, p. 115.
Magalia Gold Min. Co. v. Ferguson, 3 L. D. 234.
Magalia Gold Min. Co. v. Ferguson, 6 L. D. 218.

Land which does not as a present fact contain gold and which can not be sold as mineral land is not subject to entry under the statute.

Walton v. Batten, 14 L. D. 54, p. 57.

To entitle lands to be appropriated under the mining laws the mineral character of the deposits must be sufficient to be workable at profit above that for other purposes.

Jones v. Aztec Land & Cattle Co., 34 L. D. 115, p. 117.
See South Dakota Min. Co. v. McDonald, 30 L. D. 357.

The mineral character of the land in controversy must appear as a fact and it must be shown that mineral exists in such quantities as will justify expenditures in an effort to obtain it.

Diamond Coal, etc., Co. v. United States, 233 U. S. 236, p. 240.
Johns v. Marsh, 15 L. D. 196, p. 198.
See Royal K Placer, In re, 13 L. D. 86.
Winters v. Bliss, 14 L. D. 59.

In order to bring land within the class subject to mineral entry it must appear that the land is known at the time to be valuable for its minerals and that minerals are found in such quantity as to justify expenditures in the effort to extract them.

Dower v. Richards, 151 U. S. 658, p. 663.
Downs, In re, 7 L. D. 71, p. 73.
See Deffebach v. Hawke, 115 U. S. 392, p. 404.
Commissioners of Kings County v. Alexander, 5 L. D. 126.
United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 294.

Lands recognized as mineral by the standard authorities, where the same is found in quantity and quality to render the land sought to be patented more valuable on

this account than for agricultural purposes, comes within the purview of the mining act.

Northern Pacific R. Co. v. Soderberg, 104 Fed. 425, p. 427.
Hooper, In re, 1 L. D. 560.

The evidence of a large number of witnesses, including civil engineers, mining experts, practical miners, mining engineers, and assayers, to the effect that the formation of lands for which an application for entry has been made is similar to that of surrounding mineral bearing lands, and numerous specimens from croppings on the land contain mineral, and that all the subdivisions of the land in controversy were more valuable for mineral purposes than for agricultural, is sufficient to establish its mineral character.

Santa Clara Min. Assoc. v. Scorsur, 4 L. D. 104, p. 105.
Coleman v. McKenzie, 28 L. D. 348, p. 349.

The term "valuable mineral deposits" in this section, the expression "lands valuable for minerals" in section 2318, R. S., and the word "mines" in section 2323, R. S., the term "valuable deposits" in section 2325, R. S., as well as the expression "mines of gold" in section 2392, all refer to substantially the same thing and embrace both veins or lodes and placers.

Hawke v. Deffeback, 4 Dak. 20, p. 33.

The value and not the kind of any given mineral deposit is the controlling key by which to determine the question whether lands containing such deposits are "valuable for minerals" and are "mineral lands."

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 240.

If land is mineral it is subject to location only under the provisions of the mining law without reference to the relative value of a portion of the tract for other purposes.

Caledonia Min. Co. v. Rowen, 2 L. D. 714, p. 717.
See Kemp v. Starr, 6 C. L. O. 3.

Where land has been reported as mineral upon the plat it is presumptively mineral until the contrary appears; but if the land has been mined over until the soil has been washed from the surface of one-fourth of the area and has then been abandoned, it is not a strong prima facie case in favor of its still being mineral land within the meaning of the law.

Cutting v. Reininghaus, 7 L. D. 265, p. 267.
See Cleghorn v. Bird, 4 L. D. 478.

The decisions of the officers of the Federal Land Department show that some lands have been held subject to location as mineral under the mining laws which can scarcely be regarded as the subject of mining in the ordinary sense.

Johnson v. California Lustral Co., 127 Cal. 283, p. 286.

The form and mode of occurrence of valuable ore, however controlling and influential in determining its geological character, is not a matter upon which it can be excluded from the terms of the statute.

Hyman v. Wheeler, 29 Fed. 347, p. 354.

Proof of the mineral character of land must be specific and based upon actual production of mineral and must show that the mineral value of the land is greater than its agricultural value.

Berry v. Central Pacific R. Co., 15 L. D. 463, p. 465.
Dughi v. Harkins, 2 L. D. 721.
Cleghorn v. Bird, 4 L. D. 478.
Commissioners of King's County v. Alexander, 5 L. D. 126.
Spong, In re, 5 L. D. 193.
Magalia Gold Min. Co. v. Ferguson, 6 L. D. 218.
See Holter v. Northern Pac. R. Co., 30 L. D. 442, p. 448.
Morrill v. Northern Pac. R. Co., 30 L. D. 475, p. 477.
Power v. Hoffman, 18 C. L. O. 172.

B. PROOF INSUFFICIENT TO SHOW MINERAL CHARACTER.

The term "mineral" or "mineral lands" is not applicable to lands in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them.

- Deffeback v. Hawke*, 115 U. S. 392, p. 404.
Pike's Peak Lode, In re, 10 L. D. 200, p. 204.
Warren v. Colorado, 14 L. D. 681, p. 684.
United States v. San Pedro & Canon etc. Co., 4 N. Mex. 225, p. 294.
Cleary v. Skiffich, 28 Colo. 362, p. 368.

The fact that portions of land claimed as mineral contained particles of gold will not necessarily impress it with the character of mineral land; but it must contain metal in such quantities as to make it available and valuable for mining purposes and any other construction would operate to reserve from the uses of agriculture land which is practically worthless for any other purpose.

- Cutting v. Reininghaus*, 7 L. D. 265, p. 267.
 See *Alford v. Barnum*, 45 Cal. 482, p. 484.

Proof that neighboring or adjoining lands are mineral in character, or that the land in controversy may by possibility develop minerals in such quantity as will establish its mineral rather than its agricultural character, is not sufficient to show its present mineral character.

- Magalia Gold Min. Co. v. Ferguson*, 6 L. D. 218; 14 C. L. O. 212.
Kane v. Devine, 7 L. D. 532, p. 536.
Creswell Min. Co. v. Johnson, 8 L. D. 440, p. 442.
Blackburn v. United States, 5 Ariz. 162, p. 166.
 See *United States v. Reed*, 28 Fed. 482.
Cleghorn v. Bird, 4 L. D. 478.
Madison v. Octave Oil Co.; 154 Cal. 768, p. 772.

Land principally valuable for agriculture or for residences and business purposes are not subject to patent as mineral lands within the meaning of the statute.

- Largey v. Black*, 10 L. D. 156, p. 157.
 See *Western Pacific R. Co. v. United States*, 108 U. S. 510.
Mullan v. United States, 118 U. S. 271.
Colorado Coal, etc. Co. v. United States, 123 U. S. 307.

An affidavit of protest will offset the nonmineral affidavit of an agricultural claimant and leave the legal presumption arising from the surveyor general's return to be overcome by evidence.

- Walton v. Batten*, 14 L. D. 54, p. 56.
 See *Mulligan v. Hanson*, 10 L. D. 311.

7. VARIETY OF MINERALS INCLUDED.

a. GENERAL PRINCIPLES.

The mining laws embrace not only lands containing metallic minerals but all valuable mineral deposits of whatever kind or nature, if shown to be more valuable on account of such deposits than for agricultural purposes.

- Pacific Coast Marble Co. v. Northern Pacific R. Co.*, 25 L. D. 233, p. 240.
Union Oil Co., In re, 25 L. D. 351, p. 356.

Whatever is recognized as a mineral by the standard authorities on the subject where the same is found in quantity and quality to render the lands sought to be patented more valuable on this account than for purposes of agriculture is regarded as being valuable mineral deposits within the meaning of this section.

- Hooper*, In re, 1 L. D. 560, p. 561.
McGlenn v. Wienbroeuer, 15 L. D. 370, p. 373.
Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 239.
Alldritt v. Northern Pac. R. Co., 25 L. D. 349, p. 350.

- Union Oil Co., In re, 25 L. D. 351, p. 353.
 Florida Central etc. R. Co., 26 L. D. 600, p. 601.
 Phifer v. Heaton, 27 L. D. 57, p. 58.
 Ferrell v. Hoge, 27 L. D. 129, p. 130.
 Tulare Oil & Min. Co. v. Southern Pac. R. Co., 29 L. D. 269, p. 271.
 Morrill v. Northern Pac. R. Co., 30 L. D. 475, p. 479.
 Piatt, In re, 33 L. D. 270, p. 271.
 Elliott v. Southern Pac. R. Co., 35 L. D. 149, p. 151.
 Zimmerman v. Brunson, 39 L. D. 310, p. 312.
 See Northern Pac. R. Co. v. Soderberg, 188 U. S. 526.

There is both legislative declarations and the highest judicial determination that the term "mineral lands" in the public land laws includes minerals other than those of the metallic class.

- Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 237.
 See 14 Op. Atty. Gen. 115.

Lands containing valuable mineral deposits whether metalliferous or foessilliferous and of such quantity and quality as to render them subject to entry under the mining laws are mineral lands within the meaning of that term.

- Piatt, In re, 33 L. D. 270, p. 271.

b. SPECIFIC MINERALS INCLUDED.

See sec. 2318, p. 8.

The mineral deposits mentioned in this and succeeding sections include nonmetallic deposits such as alum, amber, asphaltum, borax, diamonds, gypsum, limestone, marble, mica, petroleum, and building stone, as well as deposits bearing gold, silver, and other metals.

- Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 205.

Lands containing deposits of asphaltum, borax, auriferous cement, fire clay, gypsum, kaolin, limestone, marble, mica, petroleum, slate, and like substances come within the operation of the mining laws when shown to be more valuable because of such deposits than for agricultural purposes.

- Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, 239.
 Union Oil Co., In re (on review), 25 L. D. 351, p. 354.
 Maxwell v. Brierly, 10 C. L. O. 50.
 Johnson v. California Lustral Co., 127 Cal. 283, p. 286.
 Nephi Plaster etc. Co. v. Juab County, 33 Utah 114, p. 118.
 See McQuiddy v. California, 29 L. D. 181.

The term valuable mineral deposits includes all minerals and alkaline substances such as borax, sulphur, alum, and asphalt.

- Regulations, In re, 1 L. D. 561.
 See Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 239.

Calcium phosphate or rock phosphate is mineral within the meaning of the mining laws.

- San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 836.
 See Northern Pacific R. Co. v. Soderberg, 188 U. S. 526.
 Webb v. American Asphaltum Co., 157 Fed. 203.

A great variety of substances such as valuable clays, gypsum, lime, stone, phosphate, guano, marble, and slate, building stone, petroleum, etc., may render land of mineral character if the quality and market conditions make the land chiefly valuable for working such deposits with profit.

- Jones v. Aztec Land & Cattle Co., 34 L. D. 115, p. 117.
 See Wright v. Larson, 7 L. D. 555.
 McKay, In re, 8 L. D. 526.
 Keller v. Bullington, 11 L. D. 140.
 Phifer v. Heaton, 27 L. D. 57.
 King v. Bradford, 31 L. D. 108, p. 110.
 Maxwell v. Brierly, 10 C. L. O., p. 50.
 Holman v. Utah, 41 L. D. 314.

While coal lands are mineral lands, yet they are not subject to entry under the mining laws, but have been disposed of under special statutes.

Truan, In re, 2 L. D. 827.

Gypsum and limestone are held to be minerals within the meaning of this section.

Hooper, In re, 1 L. D. 560.

Long v. Isaaksen, 23 L. D. 353, p. 356.

See Holman v. Utah, 41 L. D. 314.

Lands containing valuable deposits of guano are subject to entry as mineral lands.

King v. Bradford, 31 L. D. 108, p. 110.

See Richter v. Utah, 27 L. D. 95.

Proof that land contains a very extensive quantity of iron ore of superior quality and that mineral can be secured from the land in paying quantities is sufficient to meet the requirements of the law.

Tinkham v. McCaffrey, 13 L. D. 517, p. 518.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 238.

See Royal K Placer, In re, 13 L. D. 86.

Lands more valuable for deposits of limestone or marble than for purposes of agriculture, and lands containing valuable deposits of kaolin are subject to disposal under the mining laws.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 238; Copp's Min. Lands 194.

Hayden v. Jamison, 26 L. D. 373, p. 374.

Florida Central, etc., R. Co., In re, 26 L. D. 600, p. 601.

Morrill v. Northern Pacific R. Co. 30 L. D., 475, p. 480.

Piatt, In re, 33 L. D. 270, p. 271.

Maxwell v. Brierly, 10 C. L. O. 50.

See Hooper, In re, 1 L. D. 560.

Rolfe, In re, Copp's Min. L. 176.

Holman v. Utah, 41 L. D. 314.

Jacob, In re, 7 C. L. O. 83.

Lands valuable for deposits of marble and slate and more valuable on that account than for agricultural purposes are mineral lands within the meaning of the mineral laws.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 235.

Morrill v. Northern Pacific R. Co., 30 L. D. 475, p. 480.

See Schrimpf v. Northern Pacific Co., 29 L. D. 327.

Johnson v. California Lustral Co., 127 Cal. 283, p. 286.

Lands chiefly valuable on account of deposits of petroleum or mineral oil found thereon are mineral lands and subject to disposition under the mining law.

Kern Oil Co. v. Clotfelter, 30 L. D. 583, p. 585.

See Union Oil Co., In re, 25 L. D. 351.

Kern Oil Co. v. Clarke, 30 L. D. 550.

Gray Eagle Oil Co. v. Clarke, 30 L. D. 570.

Gray Eagle Oil Co. v. Clarke, (on review) 31 L. D. 303.

Kern Oil Co. v. Clarke (on review), 31 L. D. 288.

Phosphate is classed as a nonmetallic mineral substance, and is included in the class "all valuable mineral deposits," within this section, and is subject to disposal under the mining laws.

Phosphate Deposits, In re, 17 C. L. O. 30.

See Maxwell v. Brierly, 10 C. L. O. 50.

Erie Lode v. Cameron Lode, 17 C. L. O. 74, p. 75.

Lands containing valuable deposits of salines, consisting of common salt, sulphate of soda, and carbonate of soda, and such that a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine thereon, are mineral lands.

Elliott v. Southern Pac. R. Co., 35 L. D. 149, p. 152.

See Castle v. Womble, 19 L. D. 455.

Land more valuable on account of its sandstone deposits than for agriculture is subject to disposal under the mining laws and is not open to settlement under the homestead laws.

Hayden v. Jamison, 26 L. D. 373, p. 374.

See Hayden v. Jamison, 16 L. D. 537.

Hayden v. Jamison, 15 L. D. 276.

Beaudette v. Northern Pacific R. Co., 29 L. D. 248, p. 249.

Schrimpf v. Northern Pacific R. Co., 29 L. D. 327, p. 328.

Stone is a valuable mineral deposit within the meaning of this section.

Bennett, In re, 3 L. D. 116.

Maxwell v. Brierly, 10 C. L. O. 50.

Sullivan v. Schultz, 22 Mont. 541, p. 546.

Johnston v. Harrington, 5 Wash. 73, p. 78.

See Wheeler v. Smith, 5 Wash. 704, p. 708.

Lands containing valuable deposits of timber or petroleum are subject to entry under the mining laws.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 238.

Union Oil Co., In re, 25 L. D. 351, p. 354.

Dewey, In re, 9 C. L. O. 51.

Clayton, In re, Sickel's Min. L. & D. 491.

Stratton, In re, Sickel's Min. L. & D. 491.

C. SPECIFIC MINERALS NOT INCLUDED.

Bog iron is not a mineral.

Johnson v. California Lustral Co., 127 Cal. 283, p. 286.

Lands containing ordinary brick clay are not mineral lands within the meaning of the mining laws.

King v. Bradford, 31 L. D. 108, p. 109.

Dunluce Placer Mine, In re, 6 L. D. 761.

See Midland R. Co. v. Haunchwood Brick, etc., Co., L. R. 20 Ch. 552.

Holman v. Utah, 41 L. D. 314.

This section does not authorize a person to locate and purchase lands chiefly valuable for building stone.

Randolph, In re, 23 L. D. 329, p. 330.

See Holman v. Utah, 41 L. D. 314.

Lands chiefly valuable to and apparently desired by the applicant because of a cave or cavern thereon, and for the crystalline deposits and formations of various kinds found thereon, but on which there has been no discovery of mineral and which are not valuable for mineral, are not mineral lands within the meaning of the mining laws.

South Dakota Min. Co. v. McDonald, 30 L. D. 357, p. 359.

Gravel and sand suitable for using in connection with cement to form a concrete can not be classed as mineral under the mining law.

Zimmerman v. Brunson, 39 L. D. 310, p. 312.

See Bennett v. Moll, 41 L. D. 584.

The words "mineral" and "mineral deposit" are generally used in a sense which excludes salines, because saline lands had not been subject to disposal under the mineral land laws.

Leonard v. Lennox, 181 Fed. 760, p. 767.

While salt is properly classified as a mineral, yet it is not one of those minerals included or intended by the term "mineral" in the general laws relating to mineral lands.

Miller, In re, 33 L. D. 121, p. 122.

Stone useful only for general building purposes does not render land containing it subject to appropriation under the mining laws.

Zimmerman v. Brunson, 39 L. D. 310, p. 312.

Conlin v. Kelly, 12 L. D. 1.

See Holman v. Utah, 41 L. D. 314.

C. MINING LOCATIONS.

1. WHAT CONSTITUTES—EFFECT OF LOCATION.
2. MINING CLAIMS AS DISTINGUISHED FROM LOCATION.
3. METHODS OF INITIATING RIGHTS.
4. DISCOVERY ESSENTIAL.
5. EXTRALATERAL RIGHTS.
6. NUMBER OF LOCATIONS UNLIMITED.
7. POSSESSORY RIGHTS OF LOCATORS AND OWNERS.
8. OCCUPATION—MEANING.
9. TITLE OF LOCATOR—STATUTORY GRANT.
10. STATE REGULATIONS OF LOCATIONS.

1. WHAT CONSTITUTES—EFFECT OF LOCATION.

In order to make a mining location under this section the surface ground, including the vein or lode, must be appropriated, and such surface ground must belong to the United States.

Traphagen v. Kirk, 30 Mont. 562, p. 573.

See State v. District Court, 25 Mont. 504.

A location under this section carries with it the grant of an easement from the Government to the person making the location in the ground located; and this easement is the right to the possession and the right to purchase when the law has been fully complied with.

Tibbitts v. Ah Tong, 4 Mont. 536, p. 537.

See Robertson v. Smith, 1 Mont. 410, p. 414.

Belk v. Meagher, 3 Mont. 65, p. 79.

The location is the foundation of the possessory title, and possession thereunder, as required by law and local rules and customs, keeps the title alive, and the Government holds the superior title in trust for the person thus holding the possessory title.

Tibbitts v. Ah Tong, 4 Mont. 536, p. 538.

The mining laws grant to a mineral locator more than the mere right to the surface of his claim and to the veins or lodes which have their apices therein; and this section declares the lands in which valuable mineral deposits are found to be open to occupation and purchase.

St. Louis Min., etc., Co. v. Montana Min. Co., 113 Fed. 900, p. 902.

The rights which miners exercised under the implied license prior to the enactment of the mining statutes were analogous to the rights which they now have under this section and section 2324, except that the acts of Congress are more specific in defining the limitations as to the quantity of ground that may be appropriated and the manner of defining boundaries of mining claims and the giving and recording of notices of the rights claimed.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 109.

The lands located are referred to as mining claims and the locators as the owners thereof prior to the time of an application for patent.

McFeters v. Pierson, 15 Colo. 201, p. 204.

This section, in connection with section 2322 R. S., is in effect an offer to sell the public mineral lands by the owner, and a locator, by making a location thereon, accepts the offer and thereby closes the contract of purchase, and the purchaser becomes entitled to a conveyance on compliance with all the terms of the contract.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 413.

Mantle v. Noyes, 5 Mont. 274, p. 291.

The rights accruing to the locator of a mining claim under this section, and by virtue of the provisions of section 2322 R. S., exclude the theory that such locator acquires a mining easement, or the right merely to the possession of the surface ground of his claim for mining purposes only, and that such ground may be purchased by other persons for other purposes, subject only to the necessary use of his mining rights.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 414.

Mantle v. Noyes, 5 Mont. 174, p. 291.

Where a mining location is made before a town-site appropriation any reservation of surface rights in the patent by the Land Department can not affect the title conveyed by the patent.

Townsite Clause, In re, 5 L. D. 256, p. 257.

2. MINING CLAIM AS DISTINGUISHED FROM LOCATION.

By this section the mineral deposits are opened to exploration and purchase, and the land in which they are found is opened to occupation and purchase to the extent or amount defined, and the land so defined constitutes a mining claim when properly located.

Silver Bow Min. etc. Co. v. Clark, 5 Mont. 378, p. 412.

The declaration that lands containing valuable deposits of mineral are open to exploration is the first where land in which mineral is found is declared to be a substantial integral part of the claim.

Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 59.

3. METHODS OF INITIATING RIGHTS.

Individual right to acquire title to nonmineral lands can only be initiated by settlement thereon and improvements or by purchase; but rights to mining claim are initiated by discovery of valuable deposits, and mining ground may be appropriated by a location of a mining claim, as this is the mode of acquiring title to mining claims.

Collins v. Bubb, 73 Fed. 735, p. 739.

The occupation for trade or business of any known mineral land on the public domain can not initiate any right thereto nor delay proceedings for the acquisition of the title under the mining statutes.

Harry Livingston Lode, In re, 7 L. D. 319, p. 321.

See Deffeback v. Hawke, 115 U. S. 392.

The use of a part of the public land for the construction of a tunnel and for buildings to aid in the working of a mine does not initiate any right to such ground as an independent mining claim.

Waterloo Min. Co. v. Doe, 56 Fed. 685, p. 689.

An intrusion upon lands occupied by another for the purpose of locating a mining claim is but a naked unlawful trespass and can not initiate a right of preemption.

Cowell v. Lammers, 21 Fed. 200, p. 203.

Atherton v. Fowler, 96 U. S. 513.

Hosmer v. Wallace, 97 U. S. 575.

Quinby v. Conlan, 104 U. S. 420.

Dowl v. Meador, 16 Cal. 320.

See *Lebanon Min. Co. v. Consolidated Republican Min. Co.*, 6 Colo. 371, p. 380.
Weese v. Barker, 7 Colo. 178;
Meyendorf v. Frohner, 3 Mont. 282, p. 335.
Lockhart v. Leeds, 10 N. Mex. 568, p. 597.

No right of preemption can be established to a mining claim where the claimant intruded upon the actual possession of another, though the latter has no other valid title than possession.

Cowell v. Lammers, 21 Fed. 200, p. 203.
Atherton v. Fowler, 96 U. S. 513.

No right can be initiated by a forcible, fraudulent, or clandestine entry upon a mining claim in the actual possession of another for the purpose of locating a claim thereon or initiating any rights to such ground, and pending a discovery of mineral the actual possession of an intending locator of a mining claim will be protected to permit him to explore further for mineral and to prevent breaches of the peace; but if while such occupant is so engaged another enters the land peaceably and not clandestinely or fraudulently and first makes discovery, he shall be prior in right.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 485.

A prospector can not enter upon a prior placer location for the purpose of prospecting for or locating unknown lodes or veins.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 225.

4. DISCOVERY ESSENTIAL.

See sec. 2320, p. 64.

The local rules and customs of miners all recognize discovery, followed by appropriation, as the foundation of the possessor's title, and development by working as the condition of its retention.

Jennison v. Kirk, 98 U. S. 453, p. 457.
Jackson v. Roby, 109 U. S. 440.
Gillis v. Downey, 85 Fed. 483, p. 486.
Overgaard v. Westerberg, 3 Alaska 168, p. 172.
Cascaden v. Bortolis, 3 Alaska 200, p. 206.
Consolidated Republican, etc., Co. v. Lebanon Min. Co., 9 Colo. 343, p. 344.
See O'Reilly v. Campbell, 116 U. S. 418.
Price v. McIntosh, 1 Alaska 286, p. 292.
Golden v. Murphy, 31 Nev. 395, p. 410.

It is the discovery of mineral that entitles a locator to a mining claim, and it is equally meritorious whether the discovery is in a discovery shaft or in any other part of the surface ground of the location, as the statute is silent as to where the mineral shall be found.

Wight v. Tabor, 2 L. D. 738, p. 742.

While it is essential to a valid location that a discovery of mineral in place be made in a discovery shaft, as required by the Colorado statute, that becomes a question to be determined before entry.

Wight v. Tabor, 2 L. D. 738.

Proof as to the discovery of a vein or lode must show the place where and when the discovery was made, the general direction of the lode or vein and all material facts relating thereto, and the evidence should be positive and based on actual knowledge, and the means of information clearly set forth.

East Tintic Consol. Min. Claim, In re, 40 L. D. 271, p. 273.
See Silver Jennie Lode, In re, 7 L. D. 6.

A valid discovery can not be based on certain exposed deposits supposed to exist at considerable depth beneath the surface but having no connection with any deposits appearing on the surface, the exposure being of substantially worthless deposits on the surface of the claim, and at most mere surface indications of mineral within the

limits of the claim, all of which may reasonably give rise to a hope or belief that valuable mineral deposit exists, but they are not sufficient to constitute a discovery within the meaning of the statute.

East Tintic Consol. Min. Claim, In re, 40 L. D. 271, p. 273.

Exploration must precede discovery, and discovery and occupation must precede purchase.

United States v. Ringeling, 8 Mont. 353, p. 359.

It is not essential to the validity of a mining location that the discoverer shall, prior to his location, discover a vein or lode containing mineral deposits of sufficient value to justify the expenditure of labor and money to extract them; but the spirit of the statute is satisfied by the discovery of mineral deposits of such value as to at least justify the exploration of such vein or lode in the expectation of finding ore sufficiently valuable to work.

Shreve v. Copper Bell Min. Co., 11 Mont. 309, p. 338.

Brownfield v. Bier, 15 Mont. 403, p. 409.

Neither this nor the succeeding section requires as a prerequisite to the location of a mining claim that a locator discover rock in place bearing any of the precious metals named in the statute sufficient to justify persons pursuing any particular phase of any particular occupation in life only, as distinguished from any others, in spending time and means in prospecting and developing the ground within the limits of the location.

McShane v. Kenkle, 18 Mont. 208, p. 211.

5. EXTRALATERAL RIGHTS.

This section standing alone would convey title to such minerals only as were found beneath the surface of a particular location, but other sections of the statute grant extralateral rights.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 65.

6. NUMBER OF LOCATIONS UNLIMITED.

Congress has not yet seen proper to put a limitation on the number of mining claims that one individual or a single corporation may locate or acquire, and whether it shall ever deem it wise to do so rests with that body and not with the courts.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 583.

7. POSSESSORY RIGHTS OF LOCATORS AND OWNERS.

Congress recognizes the possessory rights of miners as ascertained among themselves by the rules which have become the laws of mining districts regarding these mining claims, but in doing so it has not parted with the title to the land except in cases where the land has been sold according to law.

Forbes v. Gracey, 94 U. S. 762, 763.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 449.

Northern Pacific R. Co. v. Sanders, 49 Fed. 129, p. 135.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 553.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 109.

Fort Maginnis, In re, 1 L. D. 552, p. 554; 8 C. L. O. 137.

Actual possession is no more necessary to protect the title to a mining claim than it is to protect the title to property acquired under any other grant from the United States.

Belk v. Meagher, 104 U. S. 279, p. 283.

Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 296.

McCarthy v. Speed, 11 S. Dak. 362, p. 370.

McCarthy v. Speed, 12 S. Dak. 7, p. 9.

A prospector on the public mineral domain may protect himself in his possession while he is searching for mineral, and such possession is good as a possessory title against all the world except the Government of the United States.

Crossman v. Pendery, 8 Fed. 693.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 14.

Duggan v. Davey, 4 Dak. 110, p. 123.

See *Johanson v. White*, 160 Fed. 901, p. 903.

Garthe v. Hart, 73 Cal. 541.

Before the enactment of any statute recognizing and regulating the possessory rights of a mining locator, he was, as between himself and the United States, a trespasser upon the public domain, and the mining statute was enacted to secure to him his possessory right.

Richmond Silver Min. Co. v. Davy, 10 C. L. O., 291.

By the terms of this section the locator of a mining claim has a possessory title thereto and the right to the exclusive possession and enjoyment thereof and this exclusive possession and enjoyment includes the right to work the claim, to extract the mineral therefrom, the right to the exclusive property in such mineral as well as the right to defend his possession.

Belk v. Meagher, 3 Mont. 65, p. 78.

See *Tibbitts v. Ah Tong*, 4 Mont. 536, p. 547.

The statute having clearly provided that mineral deposits are open to location by citizens of the United States and those who have declared their intention to become such, and that locators of mining claims upon complying with the laws shall have the exclusive right of possession and enjoyment of the surface and that claims shall be subject to relocation upon the failure to do the required work, these provisions ought not to be modified or repealed by the courts because there is another section providing that the claimant may waive his rights by failure to adverse an application for patent, or because a senior locator or others not parties to the litigation may forfeit their rights by failure to do the required work.

Nash v. McNamara, 30 Nev. 114, p. 138.

8. OCCUPATION—MEANING.

The term "occupation," as used in this section of the statute, is equivalent to possession, and the right to locate is included in the right to occupy, and incident to a location is the right of possession.

Tibbitts v. Ah Tong, 4 Mont. 536, p. 539.

This section declaring that ground in which mineral deposits are found shall be open to occupation and purchase is in harmony with section 2322 R. S., which gives the exclusive possession and enjoyment of the surface ground to the locator of the mineral deposit.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 413.

Mantle v. Noyes, 5 Mont. 274, p. 290.

The occupation of lands containing valuable mineral deposits given by this section is not limited by section 2386 R. S., to the necessary use of the ground located for mining purposes.

Talbott v. King, 6 Mont. 76, p. 99.

See *Mullins v. Butte Hardware Co.*, 25 Mont. 525, p. 531.

The right of occupation granted by this section is conditioned upon the performance of a certain amount of labor upon the mining claim, and if the claim is a vein or lode the locator may purchase the same upon proof of the performance of the conditions precedent by paying the stipulated price, or if it is a placer claim by paying the statutory price for such claim.

United States v. Nelson, 27 Fed. Cas. 86.

Ladda v. Hawley, 57 Cal. 51, p. 55.

9. TITLE OF LOCATOR—STATUTORY GRANT.

The title of the first taker of mineral deposits is confirmed by express statutory grant.

Burns v. Clark, 133 Cal. 634, p. 636.
See Forbes v. Gracey, 94 U. S. 762.

The title to valuable mineral deposits in the public domain is confirmed in the first taker.

Burns v. Schoenfeld, 1 Cal. App. 121, p. 124.

Under the existing mining statutes the title to a mining claim does not rest entirely on possession, but it rests upon a statutory grant.

Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 296.

The title to mineral lands can not be acquired by occupancy, except for the purpose of mining and extracting the minerals.

Burns v. Clark, 133 Cal. 634, p. 637.
Burns v. Schoenfeld, 1 Cal. App. 121, p. 124.

10. STATE REGULATIONS OF LOCATIONS.

The several States have power to regulate the location of mining claims where such regulations are not in conflict with the Constitution and laws of the United States.

Butte City Water Co. v. Baker, 196 U. S. 119, p. 122.

It is doubted whether the legislature of Colorado is authorized to attach other conditions to the appropriation of mineral lands when section 2319 R. S. only provide for the discovery of mineral within the claim.

Wight v. Tabor, 2 L. D. 738; 10 C. L. O. 392, p. 393.

A State statute can not attach a condition to the appropriation of mineral lands in conflict with the act of Congress.

Wight v. Tabor, 2 L. D. 738, p. 742.

The expression in this section "under regulations proscribed by law" is ample enough to embrace regulations proscribed by local legislatures as well as those proscribed by Congress.

O'Donnell v. Glenn, 8 Mont. 248, p. 257.

D. QUALIFICATIONS OF LOCATORS.

1. CITIZENS AUTHORIZED TO MAKE LOCATIONS.
2. CORPORATIONS.
3. PROOF OF CITIZENSHIP.
4. ALIENS CAN NOT MAKE LOCATIONS.
5. ALIEN AS JOINT LOCATOR—EFFECT.
6. TRANSFER BY ALIEN TO CITIZEN.
7. ALIEN QUALIFYING AS -CITIZEN.
8. ALIENAGE—WHO MAY QUESTION.

1. CITIZENS AUTHORIZED TO MAKE LOCATIONS.

The license contained in this section to explore, occupy, and purchase any of the lands of the United States containing mineral deposits is confined to the citizens of the United States and those who have declared their intention to become such.

Chapman v. Toy Long, 5 Fed. Cas. 497.
Tibbitts v. Ah Tong, 4 Mont. 536, p. 540.
See Wolfley v. Lebanon, Min. Co. 4 Colo. 112, p. 119.

A person seeking to acquire any right of location and purchase of a mining claim must either be a citizen of the United States or must have declared his intention to become such.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 526.

Jackson v. Dines, 13 Colo. 90, p. 93.

See O'Reilly v. Campbell, 116 U. S. 418.

Thomas v. Chisholm, 13 Colo. 105, p. 108.

The United States have granted to their citizens and to those who have declared their intention to become such the right to explore and occupy the public mineral lands.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 455.

The class of persons named in this section are the only persons who can acquire mineral land from the Government.

Lee Doon v. Teah, 68 Cal. 43.

Anthony v. Jillson, 83 Cal. 296, p. 302.

Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 566.

Strickley v. Hill, 22 Utah 257, p. 264.

See Chapman v. Toy Long, 5 Fed. Cas. 497.

Tibbitts v. Ah Tong, 4 Mont. 536.

A resident of one State is not prohibited from taking up and locating a mining claim in another State in his own name or from employing citizens and residents of such latter State to locate claims in their own names for his benefit, and this rule applies to a foreign corporation.

Book v. Justice Min. Co., 58 Fed. 106, p. 119.

Mining claims may be located and held by either men or women, as the law makes no distinction in this regard on account of sex.

Women, In re, Sickels Min. L. & D. 493, p. 494.

The broad application of this section to citizens of the United States and those who have declared their intention to become such to explore and purchase minerals and mineral lands is limited by the provisions of section 452 R. S., and necessarily includes employees of the General Land Office, and by retaining that section Congress clearly intended to prohibit employees of the General Land Office from acquiring any interest in mining claims.

Lavagnino v. Uhlig, 26 Utah 1, p. 16.

2. CORPORATIONS.

A corporation whose stockholders are all citizens of the United States has power to locate a mining claim.

McKinley v. Wheeler, 130 U. S. 630.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 463.

A corporation is to be deemed a citizen within the meaning of the statute, and as such is competent to purchase and hold a mining claim.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 538.

This section does not preclude a private corporation formed under the laws of a State, whose members are citizens of the United States, from locating a mining claim on the public lands.

McKinley v. Wheeler, 130 U. S. 630, p. 636.

United States v. Trinidad Coal Co., 137 U. S. 160, p. 168.

Wilson v. Triumph Consol. Min. Co., 19 Utah 66, p. 72.

This statute assumes that citizens of the United States are permitted to enjoy the privileges granted to them in their individual capacity by uniting themselves into an association or corporation.

McKinley v. Wheeler, 130 U. S. 630, p. 634.

It seems that a corporation is to be treated as one person and entitled to locate only to the extent permitted to a single individual.

McKinley v. Wheeler, 130 U. S. 630, p. 636.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 102.

A foreign corporation applying for a patent for a mining claim must show that it has complied with local requirements authorizing it to act as a corporation in any state other than that of its incorporation.

Alta Mill Site, In re, 8 L. D. 195, p. 197.

See Montana Min. Co., In re, 6 L. D. 261.

A foreign corporation using a domestic corporation for the purpose of acquiring title to mining claims is not an innocent purchaser.

Lakin v. Sierra Buttes Gold Min. Co., 25 Fed. 337, p. 342.

This statute does not prohibit citizens of the United States from uniting for the occupation or the purchase of public lands containing mineral deposits. The privilege is granted to citizens and they may unite in such modes as may be authorized by law; and under this section a corporation is competent to locate or join in the location of a mining claim.

McKinley v. Wheeler, 130 U. S. 630, p. 632.

A citizen of the United States acting as trustee or agent of an alien corporation is incompetent to secure title to mineral lands by proceedings under the statute.

Capricorn Placer, In re, 10 L. D. 641, p. 642.

Jamie Lee Lode v. Little Forepaugh Lode, 11 L. D. 391, p. 392.

3. PROOF OF CITIZENSHIP.

When the citizenship of a locator is put in issue it is necessary to be proved to justify judgment in favor of such locator and his assigns, under the provisions of this section.

McKinley Creek Min. Co. v. Alaska United Min. Co., 183 U. S. 563, p. 571.

Duncan v. Eagle Min. Co., 48 Colo. 569, p. 573.

See Lee v. Justice Min. Co., 2 Colo. App. 112.

Under the provisions of this section it is necessary, when application is made for the issuance of evidence of title to mining property, to show that the applicant is a citizen of the United States, or has declared his intention to become such.

Billings v. Aspen Min., etc., Co. 51 Fed. 338.

Lohman v. Helmar, 104 Fed. 178, p. 181.

The limitation of this section as to the requirement of citizenship of the locator of a mine does not require the heirs of a locator as against the colicators to prove the citizenship of their ancestor or his declaration of intention to become a citizen.

Billings v. Aspen Min., etc., Co., 51 Fed. 338, p. 342.

See Billings v. Aspen Min., etc., Co., 52 Fed. 250.

A presumption of citizenship which prevails where it is sought to overturn a title long recognized as valid does not prevail where the citizenship of the locator of a mining claim has been contested from the time of the location.

Wood v. Aspen Min. Co., 36 Fed. 25, p. 26.

Proof of the citizenship of the original locator is necessary in a suit on an adverse claim.

McKinley Creek Min. Co. v. Alaska United Min. Co., 183 U. S. 563, p. 571.

Duncan v. Eagle Min. Co., 48 Colo. 569, p. 573.

See Lee v. Justice Min. Co., 2 Colo. App. 112.

4. ALIENS CAN NOT MAKE LOCATIONS.

A person who is not a citizen of the United States and has not declared his intention to become such is not qualified to locate a mining claim.

Lee Doon v. Tesh, 68 Cal. 43.

Anthony v. Jillson, 83 Cal. 296, p. 298.

Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 566.

See *Chapman v. Toy Long*, 5 Fed. Cas. 497.

Tibbitts v. Ah Tong, 4 Mont. 536.

No title for mining claims can be held by aliens prior to the issuance of patents.

Beckner v. Coates, 3 C. L. O. 18.

The right of purchasing mineral lands of the United States is restricted by this section to citizens of the United States, and those who have declared their intention to become such, and hence aliens are excluded from the enjoyment of the privilege.

Capricorn Placer, In re, 10 L. D. 641, p. 642.

Tibbitts v. Ah Tong, 4 Mont. 536, p. 539.

When a case is brought in support of an application in the Land Department for a patent to mining property the sovereign is in fact a party to the proceeding for the procurement of title, and the question of alienage is therefore necessarily presented, and the necessary qualifications prescribed by the statute must appear.

Lohman v. Helmer, 104 Fed. 178, p. 181.

See *Lee Doon v. Tesh*, 68 Cal. 43.

The objection of alienage may prevent an alien from acquiring title to a mining claim and such an objection may be made by any adversary interested in a proceeding to procure title to mining property from the United States, and the objection of alienage is based solely on the right of the Government to interpose such fact as a bar to his procuring or holding the title; but if a patent has been issued to an alien it can not be attacked by a third party.

Billings v. Aspen Min., etc., Co., 52 Fed. 250.

Lone Jack Min. Co. v. Megginson, 82 Fed. 89, p. 93.

Duncan v. Eagle Min. Co., 48 Colo. 569, p. 576.

See *Sherlock v. Leighton*, 9 Wyo. 297, p. 312.

Aliens who have not declared their intention to become citizens of the United States are not within the provisions of this section, and by a necessary implication are prohibited from the exercise of the rights conferred by it.

Chapman v. Toy Long, 5 Fed. Cas. 497.

The right to locate and the right to possess a mining claim are parts of the same grant, and neither can exist without the other; and if an alien who is incapable of making a location acquires the grant by assignment or conveyance his possession thereunder is of no consequence, as an alien can not become the Government's grantee he can not become such by being the grantee of the Government's grantee.

Tibbitts v. Ah Tong, 4 Mont. 536.

Cited and approved in *Lohman v. Helmer*, 104 Fed. 178, p. 180.

Chapman v. Toy Long, 5 Fed. Cas. 497.

This section declares that the mineral deposits in the public lands are open to occupation and purchase by citizens of the United States and those who have declared their intention to become such, but it does not prevent an alien from purchasing or owning a mining claim.

Lohman v. Helmer, 104 Fed. 178, p. 179.

The question as to the right of an alien to inherit an interest in a mining claim located upon Government land is determined by the laws of the State in which the mine is situated and not by the United States statutes.

Billings v. Aspen Min., etc., Co., 51 Fed. 338, p. 343.

5. ALIEN AS JOINT LOCATOR—EFFECT.

Aliens may, with others, take by purchase mineral lands or mining claims, and their grantors, having acquired the title of the United States thereto, have power to convey the same, and aliens may always hold such property until office found, though they may be exposed to the danger of forfeiting the lands to the State upon such inquest of office found.

Lohman v. Helmer, 104 Fed. 178, p. 180.
See Ferguson v. Neville, 61 Cal. 356.

An alien who has expended time, labor, and money in prospecting for and locating a mine conjointly with others can not be ousted by them or refused the right to participate in the proceeds thereof by reason of his alienage.

Billings v. Aspen Min., etc., Co., 51 Fed. 338.
Billings v. Aspen Min., etc., Co., 52 Fed. 250.
Lohman v. Helmer, 104 Fed. 178, p. 181.

The alienage of a joint locator of a mine does not have the effect of transferring his interest to his colocators.

Billings v. Aspen Min., etc., Co., 51 Fed. 338, p. 342.

The United States may by proper proceedings deprive an alien of the benefits of a location made by him, but colocators of such alien can not avail themselves of the right of escheat belonging to the Government.

Billings v. Aspen Min., etc., Co., 51 Fed. 338, p. 342.
See Billings v. Aspen Min., etc., Co., 52 Fed. 250.
Lone Jack Min. Co. v. Megginson, 82 Fed. 89, p. 93.
Lohman v. Helmer, 104 Fed. 178, p. 181.

If one of several locators of a mining claim is a citizen of the United States and the claim located contains no more than one person is authorized to locate, then the location of the claim is good as to such citizen, though the other locators are aliens and not entitled to make the location.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 537.

A location of a mining claim by a citizen of the United States and an alien jointly, not exceeding the amount of ground allowed to one locator, is valid as to the citizen, and a conveyance by him through an alien to another citizen conveys a complete title to the claim if the other provisions of the law are complied with.

Strickley v. Hill, 22 Utah 257, p. 265.
See Wilson v. Triumph Consol. Min. Co., 19 Utah 66, p. 73.

6. TRANSFER BY ALIEN TO CITIZEN.

If a person not a citizen of the United States performs all the acts necessary to make a valid location of a mining claim, and does the work necessary to keep such claim good had he been a citizen, and then conveys such claim to another, and such assignee is a citizen and takes possession and control of the claim, keeps up the monuments and markings and performs the necessary conditions to keep the claim good, he acquires a valid right to such claim from the date of the assignment to him, where no rights had attached in favor of another prior to such assignment, and the subsequent performance of the conditions.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 536.
Wilson v. Triumph Consol. Min. Co., 19 Utah 66, p. 73.
See Strickley v. Hill, 22 Utah 257, p. 266.

While the same qualification is required in those who may purchase mining property as is required of those who may possess such property, this does not render possessory

rights any the less property which is susceptible of distinct ownership or involve the consequence that their transfer to unqualified persons would operate as a forfeiture.

Manuel v. Wulff, 152 U. S. 505, p. 510.

Lohman v. Helmer, 104 Fed. 178, p. 181.

A person qualified to locate a mining claim under this section may sell and convey his possessory right to a person not so qualified, and a qualified person may purchase from such unqualified one and obtain a valid title to an unpatented mining claim.

Ferguson v. Neville, 61 Cal. 356.

Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 566.

See Lee Doon v. Tesh, 68 Cal. 43, p. 49.

A qualified grantee or transferee of a mining claim located by an alien who had performed all the acts necessary to make a valid location and had performed the necessary representation work, and who after the conveyance or transfer performs the necessary conditions to keep the claim good, acquires a valid title to such claim as against third persons from the time he received the transfer or conveyance of the claim.

Wilson v. Triumph Consol. Min. Co., 19 Utah 66, p. 72.

Stewart v. Gold, etc., Co., 29 Utah 443, p. 447.

7. ALIEN QUALIFYING AS CITIZEN.

Where an alien locates a mining claim, and afterwards properly declares his intention to become a citizen, he may have advantage of all he had previously done toward such location, where no other claim to the ground and no rights had intervened.

Crocus Min., etc., Co. v. Colorado, etc., Min. Co., 19 Fed. 78, p. 81.

Krogstad, In re, 4 L. D. 564, p. 565.

A declaration to become a citizen of the United States must be made before a court of record and is presumed to be made in good faith, but this intention may be abandoned, and if abandoned the right to explore and purchase mineral lands is lost.

Saturday Lode, In re, 29 L. D. 627.

The location of a mining claim by an alien is not void but voidable, and his declaration of intention made before there is any attempted relocation of the claim relates back to the date of his location and operates to validate it, and upon declaring that intention he is entitled to the advantage of work previously done and of the record previously made by him in the location of said claim.

Leary v. Manuel, 12 L. D. 345.

McEvoy v. Megginson, 29 L. D. 164, p. 165.

See North Noon-day Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 524.

Lone Jack Min. Co. v. Megginson, 82 Fed. 89.

Nominally this section discriminates against the alien generally, but in fact against the Chinaman only, because all aliens, including the Congo negro, and excepting the Mongolian, are permitted to become naturalized, and therefore to locate and occupy mining lands.

Chapman v. Toy Long, 5 Fed. Cas. 497.

An alien 21 years of age who is honorably discharged after serving an enlistment in the United States Army occupies the status of one who has declared his intention to become a citizen, under the homestead law, and the same rule applies to mineral lands.

Strickley v. Hill, 22 Utah 257, p. 268.

8. ALIENAGE—WHO MAY QUESTION.

An alien who explores and locates a mining claim on public land may hold it against all the world except the United States, notwithstanding the provisions of the statute.

Lone Jack Min. Co. v. Megginson, 82 Fed. 89, p. 93.

Wilson v. Triumph Consol. Min. Co., 19 Utah 66, p. 73.

Stewart v. Gold & Copper Co., 29 Utah 443, p. 447.

The fact that a mining claim is located by an alien can only be taken advantage of by the Government, and such location is not illegal or void, and is only voidable by the act of the Government.

Shea v. Nilima, 133 Fed. 209, p. 215.

By this section mineral lands are open to occupation and purchase by citizens of the United States or those who have declared their intention to become such; and an alien has no power to make a mining location under this statute, but a location by an alien is free from attack, and voidable only by the Government.

Manuel v. Wulff, 152 U. S. 505, p. 510.

McKinley Creek Min. Co. v. Alaska United Min. Co., 183 U. S. 563, p. 571.

Matlock v. Stone, 77 Ark. 195, p. 199.

Holdt v. Hazard, 10 Cal. App. 440, p. 443.

See McCarthy v. Speed, 11 S. Dak. 362, p. 366.

The location of a mining claim by an alien can not be attacked in a suit between private parties.

Tornanses v. Melsing, 109 Fed. 710, p. 711.

Manuel v. Wulff, 152 U. S. 505.

Billings v. Aspen Min., etc., Co., 52 Fed. 250.

Lone Jack Min. Co. v. Megginson, 82 Fed. 89.

Matlock v. Stone, 77 Ark. 195, p. 199.

McCarthy v. Speed, 11 S. Dak. 362, p. 366.

Holdt v. Hazard, 10 Cal. App. 440, p. 443.

Wilson v. Triumph Consol. Min. Co., 19 Utah 66, p. 73.

Stewart v. Gold & Copper Co., 29 Utah 443, p. 447.

E. VEIN OR LODGE—DEFINITION.

Valuable mineral, as gold, silver, copper, etc., intermingled with or embedded in the rock in place, is called a lode, and the rock is quarried not for the stone but for the mineral it contains.

Conlin v. Kelley, 12 L. D. 1, p. 3.

The term "vein or lode" does not mean a merely typical fissure or contact vein, but any fairly well-defined zone or belt of mineral-bearing rock in place.

East Tintic Consol. Min. Claim, In re, 40 L. D. 271, p. 273.

A vein can not be said to exist merely because rock is crushed, shattered, or even fissured, and what constitutes a vein must depend somewhat upon the nature of the country in which it is alleged to be found, but a true vein may be barren in some places; and a court will not declare as a matter of law that a whole limestone area thousands of feet wide is one vein.

Mammoth Min. Co. v. Grand Central Min. Co., 213 U. S. 72, p. 76.

Grand Central Min. Co. v. Mammoth Min. Co., 29 Utah 490.

F. MINING CLAIM AS PROPERTY.

1. OWNERSHIP AND TRANSFER.

2. DOWER RIGHTS DO NOT ATTACH.

1. OWNERSHIP AND TRANSFER.

A mining claim perfected under the statute is property which may be bought, sold, and conveyed, and which passes by descent.

Forbes v. Gracey, 94 U. S. 762, p. 765.

Belk v. Meagher, 104 U. S. 279, p. 283.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 550.

O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 854, p. 855.

Alexander v. Sherman, 2 Ariz. 326, p. 329.

Phoenix Min., etc., Co. v. Scott, 20 Wash. 48, p. 50.

2. DOWER RIGHTS DO NOT ATTACH.

The estate of the locator in a mining claim before patent is not such an estate that dower attaches to it.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.

Black v. Elkhorn Min. Co., 52 Fed. 859, p. 862, affirmed on this point; *Black v. Elkhorn Min. Co.*, 49 Fed. 549, overruled on this point.

See *Black v. Elkhorn Min. Co.*, 47 Fed. 600.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 107.

O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 854, p. 856.

Bechtol v. Bechtol, 2 Alaska 397, p. 401.

There is no right of dower in the estate held by the United States in or to a mining claim after location and before patent.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 553.

G. MINERAL AND AGRICULTURAL CLAIMANTS—BURDEN OF PROOF.

See sec. 2318.

Where a mineral location is made on lands returned as agricultural the burden of proof is upon the mineral claimant, and he may show the inferior rights of the agricultural claimant.

Caledonia Min. Co. v. Rowen, 2 L. D. 714, p. 718.

Dughi v. Hawkins, 2 L. D. 721.

Magalia Gold Min. Co. v. Ferguson, 3 L. D. 234, p. 236.

Where lands are prima facie agricultural the burden of proof is upon a mineral claimant to show its mineral character, and he must show that the mineral exists in sufficient quantity to make it more valuable for mining than for agricultural purposes.

Tinkham v. McCaffrey, 13 L. D. 517, p. 518.

See *Savage v. Boynton*, 12 L. D. 612.

In a controversy between a mineral and an agricultural claimant the question is whether the mineral character of the land is such as to make the land more valuable for mining than for agricultural purposes, or whether the mineral character is shown to be such as to warrant the conclusion that minerals might be obtained by well-known processes of mining in sufficient quantities and of such value as to make it more profitable for mining than agriculture.

Creswell Min. Co. v. Johnson, 8 L. D. 440, p. 441.

McLemore v. Express Oil Co., 158 Cal. 559, p. 566.

Where land rated as agricultural is claimed as a mining location the burden is on the mineral claimant to show by a preponderance of the evidence that the land is more valuable for mining than for agricultural purposes as a present fact, and not that it may possibly develop minerals of such a quantity and of such a character as to establish its mineral value.

Creswell Min. Co. v. Johnson, 8 L. D. 440, p. 442.

McLemore v. Express Oil Co., 158 Cal. 559, p. 566.

In a contest between a mineral and an agricultural claimant the question is whether as a present fact the land is more valuable for the mineral it contains than for agricultural purposes.

Peirano v. Pendola, 10 L. D. 536, p. 538.

Walton v. Batten, 14 L. D. 54, p. 56.

Cleary v. Skiffich, 28 Colo. 362, p. 368.

See *Cutting v. Reininghaus*, 7 L. D. 265.

Creswell Min. Co. v. Johnson, 8 L. D. 440.

Winters v. Bliss, 14 L. D. 59, p. 61.

To defeat a preemption entry because of the mineral character of the land it must be shown that mineral was known to exist at the time of the entry; but a subsequent discovery of mineral will not warrant the cancellation of a preemption entry.

Harnish v. Wallace, 13 L. D. 108, p. 109.

See *Colorado Coal & Iron Co. v. United States*, 123 U. S. 307, p. 328.

Caste, In re, 3 L. D. 169.

Abercrombie, In re, 6 L. D. 393.

Laney, In re, 9 L. D. 83.

Miner, In re, 9 L. D. 408.

Plymouth Lode, In re, 12 L. D. 513.

Rea v. Stephenson, 15 L. D. 37.

Jones v. Driver, 15 L. D. 514.

Arthur v. Earle, 21 L. D. 92.

Chormicle v. Hiller, 26 L. D. 9.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 17.

In a contest against an agricultural claimant the burden of proof is upon the mineral claimant; but where the mineral claimant has a filing of record the burden shifts and is then upon the agricultural claimant.

Walton v. Batten, 14 L. D. 54, p. 55.

If land is worth more for agriculture than mining it is not mineral land, though it may contain some measure of gold or silver.

Winters v. Bliss, 14 L. D. 59, p. 62.

See *United States v. Reed*, 28 Fed. 482.

Cleary v. Skiffich, 28 Colo. 362, p. 368.

A person who purchases a part of the public domain as agricultural lands with a knowledge that it is mineral land does not acquire a good title.

United States v. Culver, 52 Fed. 81.

H. POSSESSION OF MINING CLAIMS—JURISDICTION OF FEDERAL COURTS.

The right of possession to mining claims given by this and other sections does not necessarily confer jurisdiction on a Federal court, regardless of citizenship, as such an action may involve the question of the right of possession only.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 508.

This section, with others, expressly provides that the right of possession may be determined by local customs or rules of miners; and accordingly the right of possession may not involve any question under the Constitution or laws of the United States, but simply a determination of local rules and customs or State statutes.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 508.

I. PATENT—EFFECT AS A CONVEYANCE.

Under the statute a patent for a mining claim conveys the subsurface as well as the surface, and the only limitation on the exclusive title thus conveyed is the right to pursue a vein which on its dip enters the subsurface.

St. Louis Min. etc. Co. v. Montana Min. Co., 194 U. S. 235, p. 237.

SECTION 2320, REVISED STATUTES.

Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the 10th day of May, 1872, whether located by one or more persons, may equal, but shall not exceed, 1,500 feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than 300 feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May, 1872, render such limitation necessary. The end lines of each claim shall be parallel to each other.

This section is the same as section 2, act of May 10, 1872 (17 Stat. 91), p. 677.

A. CONSTRUCTION AND APPLICATION OF MINING LAWS.

B. VEIN OR LODE, p. 36.

C. MINING LOCATIONS OR CLAIMS, p. 48.

A. CONSTRUCTION AND APPLICATION OF MINING LAWS.

1. MINING STATUTES CONSTRUED TOGETHER.

2. OBJECTS OF MINING STATUTES.

1. MINING STATUTES CONSTRUED TOGETHER.

If this and section 2329 were to be construed independently as though standing by themselves, or if the mining act as a whole contained nothing of a nature purporting to show that the general words used in this section, "gold, silver, cinnabar, lead, tin, and copper," were intended in a larger sense than these specific words indicate, then it might be concluded that the mining laws apply only to metallic substances.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 241.

The validity of a location or claim under the mining laws of the United States must be determined by those laws themselves.

Riley, In re, 33 L. D. 68, p. 70.

The right granted by statute to locate mining claims, prior to the acquisition of a vested right, is not an obstruction either to the disposition or the reservation of the public lands.

Gibeon v. Anderson, 131 Fed. 39, p. 41.

This, with other sections of the mining laws, makes certain provisions for the locating, working, holding, and purchasing of mining claims upon veins or lode of quartz or other rock in place bearing valuable mineral deposits.

Harry Lode Min. Claims, In re, 41 L. D. 403, p. 406.

- Harrington v. Chambers, 3 Utah 94, p. 115.
 Golden Terra Min. Co. v. Smith (Mahler), 2 Dak. 377.
 See Henderson v. Fulton, 35 L. D. 652, p. 658.
 Ambergis Min. Co. v. Day, 12 Idaho 108, p. 115.
 McShane v. Kenkle, 18 Mont. 208, p. 211.
 Columbia Copper Min. Co. v. Dutches Min., etc., Co., 13 Wyo. 244.

In order to determine whether lands containing a given mineral deposit are subject to location under this section resort is to be had to the language of the statute rather than to definitions of the terms "vein" or "lode" given by scientific writers.

- Henderson v. Fulton, 35 L. D. 652, p. 662.
 Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 322.

The definitions of veins vary according to the facts under consideration, and the term is not susceptible of any arbitrary definition applicable to many cases, but must be controlled in a measure by the conditions of locality and deposit. The distinguishing feature between a vein and the formation enclosing it may be visible, as it must have boundaries, but it is not necessary that these be seen, as their existence may be determined by assay and analysis. The controlling characteristic of a vein is a continuous body of mineral-bearing rock in place in the general mass of the surrounding formation.

- Henderson v. Fulton, 35 L. D. 652, p. 659.
 Larson, In re, 9 C. L. O. 2.
 Golden v. Murphy, 31 Nev. 395, p. 427.
 See Hyman v. Wheeler, 29 Fed. 347.
 Cheesman v. Shreeve, 40 Fed. 787.
 Iron Silver Min. Co. v. Cheesman, 116 U. S. 529.
 Beals v. Cone, 27 Colo. 473.

2. STRICT DEFINITIONS.

The fact that the terms "veins" and "lodes" have been used by Congress in connection with each other is suggestive that it was intended to avoid any limitation in the application of these acts which might be imposed by a scientific definition of either term.

- Hayes v. Lavagnino, 17 Utah 185, p. 196.

Any definition of a vein or lode which does not embrace deposits of cinnabar is as defective as if it did not embrace deposits of gold.

- Larson, In re, 9 C. L. O. 2.
 See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819; 4 Saw'y, 302.
 Van Zandt v. Argentine Min. Co., 48 Fed. 770.

The fact that cinnabar is usually found in fissures of the earth's crust, or in veins or lodes as defined by geologists, but occurs generally in fibrous or amorphous masses, bedded in shale or slate rock, is sufficient to show that Congress did not intend to adopt or follow purely scientific definitions in the enactment of these statutes.

- Hayes v. Lavagnino, 17 Utah 185, p. 195.

The fact that lead is frequently found between strata in flat cavities, in beds within sandstones and rudimentary limestones, formations that do not answer to veins or lodes when speaking with scientific accuracy, would show that Congress by this and previous statutes did not intend to adopt the scientific definitions of veins or lodes.

- Hayes v. Lavagnino, 17 Utah 185, p. 196.

A vein or lode is a body of mineral or mineral body of rock within defined boundaries in the general mass of the mountain, and it is not affected by the thinness of the matter in particular places, nor does the fact that it is occasionally found in the general course of the vein or shoot in pockets deeper down into the earth, or higher up, and there may be a total interruption of ore matter; but it is sufficient if the contact remains

on each side, and the limestone and porphory are still preserved, and the vein of mineral matter is found within a short distance pursuing the same contact.

Stevens v. Williams; 23 Fed. Cas. 40, p. 42.

A vein or lode is a seam or fissure in the earth's crust filled with quartz or with some kind of rock in place containing gold, silver, or other valuable mineral deposits named in the statute.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 530.

Jupiter Min. Co. v. Bodie Consol., etc., Min. Co., 11 Fed. 666, p. 675.

Book v. Justice Min. Co., 58 Fed. 106, p. 125.

Larson, In re, 9 C. L. O. 2.

Montague v. Dobbs, 9 C. L. O. 165.

Shreve v. Copper Bell Min. Co., 11 Mont. 309, p. 335.

Fitzgerald v. Clark, 17 Mont. 100, p. 136.

See Henderson v. Fulton, 35 L. D. 652, p. 658.

Nome v. Steelsmith, 1 Alaska 121, p. 127.

A vein or lode is a body of mineral or mineral-bearing rock within defined boundaries in the general mass of the mountain.

Iron Silver Min. Co. v. Cheesman, 8 Fed. 297, p. 301.

Hyman v. Wheeler, 29 Fed. 347, p. 355.

Cheesman v. Shreeve, 40 Fed. 787, p. 793.

Harry Lode Min. Claims, In re, 41 L. D. 403, p. 407.

Larson, In re, 9 C. L. O. 2.

Beals v. Cone, 27 Colo. 473, p. 485.

Noyes v. Clifford, 37 Mont. 138, p. 150.

Hayes v. Lavagnino, 17 Utah 185.

Grand Central Min. Co. v. Mammoth Min. Co., 29 Utah 490, p. 574.

See Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525.

A vein or lode is a fissure in the earth filled with quartz in place carrying gold and silver or other minerals.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 544.

A vein or lode is any class of deposits of mineral matter coming from the same source, impressed with the same forms and appearing to have been created by the same processes.

Stevens v. Williams, 23 Fed. Cas. 40, p. 42.

See Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 536.

A vein or lode is mineral-bearing rock or other earthy matter in place in a fissure in rock having its boundaries sharply defined by rocky walls in place, and a lode location is the location of such a lode or vein in the manner prescribed by the statute.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 204.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 835.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 484.

A vein or lode is defined to be a seam or layer of any substance, more or less wide, intersecting the rock or strata, and not corresponding with the stratification, and is often limited in the language of miners to such a layer or course of metal or ore.

Cheesman v. Shreeve, 40 Fed. 787, p. 792.

Beals v. Cone, 27 Colo. 473, p. 485.

The words "vein" or "lode" may embrace any description of deposit in the general mass of the country, and whether it is a bed, or segregated vein, or gash vein, or true fissure vein, or merely a deposit, and in all such cases they are lodes if in veins; and if they do not come under the description of the latter they do under that of the former, and are recognized as such by the miners.

Stevens v. Williams, 23 Fed. Cas. 44, p. 45.

Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 536.

Noyes v. Clifford, 37 Mont. 138, p. 150.

See King v. Amy & Silversmith Consol. Min. Co., 9 Mont. 543.

A vein or lode within a mining location, which has been known to exist by reason of the proper location and recording of the notice, is one which is valuable for its mineral deposits.

Wilson Creek Consol. Min., etc., Co. v. Montgomery, 23 L. D. 476, p. 477.
See Noyes v. Mantle, 127 U. S. 348.

The controlling characteristic of a vein is a continuous body of mineral-bearing rock in place in the general mass of the surrounding formation, and is a mineral-bearing vein within the meaning of the law if it possesses these requisites and carries mineral in appreciable quantities, though its boundaries have not been ascertained.

Harry Lode Min. Claims, In re, 41 L. D. 403, p. 407.
Beals v. Cone, 27 Colo. 473.

By the term "vein or lode" is not meant merely a typical fissure or contact vein, but any fairly well-defined zone or belt of mineral-bearing rock in place.

East Tintic Consol. Min. Co., In re, 40 L. D. 271, p. 273.
Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 323.
See East Tintic Consol. Min. Co., In re, 41 L. D. 255, p. 256 (rehearing).

The expression in this sentence "the vein or lode" can only refer to the lode which the locator expects to develop and mine and can not refer to disconnected deposits of ore of no possible value in themselves.

East Tintic Consol. Min. Co., In re, 41 L. D. 255, p. 256 (rehearing).

A broken, altered, and mineralized zone of limestone, lying between walls of quartzite, constitute a lode or vein within the meaning of the mining laws.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 407.
See United States Min. Co. v. Lawson, 134 U. S. 769.
Lawson v. United States Min. Co., 207 U. S. 1.

Calcium phosphate or rock phosphate is found in horizontal veins or what is commonly called blanket veins, and when so found must be located as lode claims.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 836.
See Duffield v. San Francisco Chemical Co., 198 Fed. 942.
Duffield v. San Francisco Chemical Co., 205 Fed. 480.

3. WHAT CONSTITUTES.

There are four classes of cases where the courts are called upon to determine what constitutes a lode or vein within the meaning of the statute: (1) Between lode locators, (2) between placer and lode claimants, (3) between mineral and town-site claimants, and (4) between mineral and agricultural claimants.

Ambergris Min. Co. v. Day, 12 Idaho 108, p. 117.
See Migeon v. Montana Central R. Co., 77 Fed. 249, p. 254.

A continuous body of mineralized rock lying within any other well-defined boundaries on the earth's surface and under it would equally constitute in the eyes of the miner a lode, and this section is applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock, and includes all deposits of mineral matter found throughout a mineralized zone or belt coming from the same source, impressed with the same forms, and appearing to have been created by the same processes.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.
Cheesman v. Shreeve, 40 Fed. 787, p. 798.
See Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

The jointure or union of rocks differing in character, or of the same character, not like a fissure, is a lode or vein, and if in some space between such rock there is found a material which sometimes or even frequently exists with valuable ore in lodes, it is

immaterial in this respect; and it appears that as to all such contacts and all such deposits as are found in the neighborhood of Leadville a lode can not exist without valuable ore.

Stevens v. Gill, 23 Fed. Cas. 12, p. 13.

Whether what is commonly called a contact is to be regarded as a vein or lode depends upon whether it contains valuable ore, but if there is value the form in which it appears is of no importance; and if it is iron or manganese, carbonate of lead, or something else yielding silver, the result is the same, as the law will not distinguish between different kinds and classes of ores if they have appreciable value in the metal for which the location was made; and it is not necessary that the ore shall be of economical value for treatment, but it is sufficient if there is something ascertainable and beyond a mere trace, and which can be positively and certainly verified as existing in the ore; and in the case of silver the value is measured by ounces; and if there is one or more ounces in a ton of ore, it is sufficient, other conditions being satisfied, to establish the existence of a lode.

Stevens v. Gill, 23 Fed. Cas. 12, p. 13.

See *Stevens v. Williams*, 23 Fed. Cas. 40.

Stevens v. Williams, 23 Fed. Cas. 44, p. 47.

A vein or lode is a continuous bed of mineralized rock lying within any other well-defined boundaries of the earth's surface and under it, and the term is used in the act of Congress as applicable to any zone or bed of mineralized rock lying within boundaries clearly separating it from the neighboring rock.

Stevens v. Williams, 23 Fed. Cas. 40, p. 42.

Congress intended by the term "vein or lode" to embrace and include all forms of deposit which are located in the general mass of the mountain by whatever name they may be known, regardless of distinctions in the technical uses of the terms.

Stevens v. Williams, 23 Fed. Cas. 44, p. 45.

Synnott v. Shaughnessy, 2 Idaho 111, p. 116.

It is the surrounding mass of the country rock which incloses the lode rather than the material of which it is composed that gives it its character as such, and the presence of mere sand or friable material which can not strictly be called rock does not affect the character of the lode, as it is in such case a vein or lode in place, if the wall on each side is fixed and immovable.

Stevens v. Williams, 23 Fed. Cas. 44, p. 45.

To make an ore body continuous it must be deposited in that form or removed bodily with its inclosing rocks to the place in which it is found.

Iron Silver Min. Co. v. Cheesman, 8 Fed. 297, p. 301.

The veins, lodes, or fissures within the meaning of this section are usually found in the surrounding rock and can be readily traced.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 695.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 534.

Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 536.

Veins and lodes have many characteristics, and they may lie in fissures or other openings in the rock, may contain materials differing or in some respects corresponding to such rock, may be of tabular form and of a branched structure, and may have selvages and slickensides in the fissures and openings, and some of these characteristics may be common to all lodes and veins while others are of rare occurrence.

Hyman v. Wheeler, 29 Fed. 347, p. 353.

Cheesman v. Shreeve, 40 Fed. 787, p. 794.

The result is the same whether the ore is in the form of a broken mass of blue and brown limestone between regular walls of the same rocks or a part of such strata is

solid formation, mineral by replacement of some of their constituents with valuable materials, and the name which science may apply to it is of no importance.

Hyman v. Wheeler, 29 Fed. 347, p. 353.

Cheesman v. Shreeve, 40 Fed. 787, p. 794.

An impregnation to the extent to which it may be traced as a body of ore is as fully within the terms of the statute in reference to veins and lodes as any other form of deposit.

Hyman v. Wheeler, 29 Fed. 347, p. 353.

Cheesman v. Shreeve, 40 Fed. 787, p. 795.

While a vein or lode must have boundaries it is not necessary that they must be such as can be seen; and it is sufficient if it can be determined by classifying it as a segregated or contact fissure vein, or as a bed or impregnation of ore; and it need not be separated from the country rock by planes or strata of such rock visible to the eye.

Hyman v. Wheeler, 29 Fed. 347, p. 353.

Cheesman v. Shreeve, 40 Fed. 787, p. 795.

Where the evidence shows well-defined boundaries, very slight proof of ore or mineral within such boundaries will be sufficient to prove the existence of a vein or lode, as such boundaries constitute a fissure; and if ore is found in such a fissure, though at considerable intervals and in small quantities, it will still be a vein or lode.

Hyman v. Wheeler, 29 Fed. 347, p. 355.

Cheesman v. Shreeve, 40 Fed. 787, p. 794.

Columbia Copper Min. Co. v. Dutchess Min. etc. Co., 13 Wyo. 244, p. 253.

A fissure in the earth's crust and openings in its rock and strata, made by some force of nature in which the mineral is deposited, may be regarded as important, if not essential, in determining what is a vein or lode; but to the miner such fissure and its walls are only of importance as indicating the boundaries within which he may look for and reasonably expect to find mineral ore.

Cheesman v. Shreeve, 40 Fed. 787, p. 792.

This section is intended to be liberal and broad enough to apply to any kind of a vein or lode of quartz or other rock-bearing mineral in whatever kind, character, or formation the mineral may be found, and should be so construed as to protect locators of mining claims who have discovered rock in place bearing any minerals named and sufficient to justify the expenditure of time and money in prospecting and developing the ground located.

Book v. Justice Min. Co., 58 Fed. 106, p. 120.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 544.

Montana Central R. Co. v. Migeon, 68 Fed. 811, p. 814.

Migeon v. Montana etc. R. Co., 77 Fed. 249.

Bonner v. Meikle, 82 Fed. 697.

Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 807.

Lange v. Robinson, 148 Fed. 799, p. 802.

King Solomon Tunnel Co. v. Mary Verna Min. Co., 22 Colo. App. 528, p. 538.

Burke v. McDonald, 2 Idaho 646.

Ambergis Min. Co. v. Day, 12 Idaho 108, p. 117.

Murray v. White, 42 Mont. 423, p. 433.

Fox v. Myers, 29 Nev. 169, p. 185.

Harrington v. Chambers, 3 Utah 94.

Columbia Copper Min. Co. v. Dutchess etc. Co., 13 Wyo. 244, p. 253.

See Henderson v. Fulton, 35 L. D. 652, p. 658.

The words "vein or lode" within the meaning of the last clause of this section are intended to apply "to such veins or lodes" as were described in the first clause of this section and have the same meaning; that is, a vein or lode "of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits."

Book v. Justice Min. Co., 58 Fed. 106, p. 120.

Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 807.

Between the hanging and foot walls of a fissure vein there are found bodies of quartz varying in richness, and there are many places varying in length between the quartz bodies or pay shoots where no quartz will be found in the fissure between the walls, yet the vein exists and may be as well defined as if it was filled with quartz.

Consolidated Wyoming etc. Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 544.

The statutory requirement of lode or vein is satisfied if the zone or belt as a whole bears any of the valuable deposits mentioned in the statute.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.

This section is to be construed in the light of and commonly known use of the terms "vein" and "lode," as defined by miners as the result of practical experience in mining in order to avoid any limitation in the application of the law which a scientific definition of these terms might impose; and it is also to be construed in the light of the general purpose and policy of Congress to protect bona fide locators of mineral lands and the development of the mineral resources of the country.

Henderson v. Fulton, 35 L. D. 652, p. 662.

Jefferson-Montana Copper Co., In re, 41 L. D. 320, p. 322.

In many ledges having distinct hanging and foot walls the country beyond either is more or less mineralized and at times even small deposits of ores are found beyond the limits of such walls, yet it can not be said that such mineralized country rock constitutes a part of the ledge.

Bunker Hill etc. Min. etc. Co. v. Empire State etc. Min. etc. Co., 134 Fed. 268, p. 273.

The presence of clay, selvages, slickensides, striations, and ribbing of the walls is as strong evidences of the permanency and continuity of a fissure vein as the existence of the quartz itself.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 545.

The existence of a vein or lode is not affected by a casual and occasional interruption if there is a general and pervading continuance of the mineral matter pursuing the same general course, bounded by the same rocky matter above and below.

Stevens v. Williams, 23 Fed. Cas. 40, p. 43.

Stevens v. Williams, 23 Fed. Cas. 44, p. 47.

See *Phillipotts v. Blasdel*, 8 Nev. 62.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 76. (dissenting opinion).

A deposit of mineralized quartzite, a formation of purely sedimentary origin, about 10 feet in thickness, inclosed between a stratum of limestone and a separate and distinct bed of quartzite, with a slight dip, constitutes a vein or lode within the meaning of the mining laws.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 407.

Duggan v. Davey, 4 Dak. 110.

A deposit of phosphate rock confined between well-defined boundaries varying in thickness from a few inches to 10 or 12 feet, confined between well-defined boundaries, constitutes a vein or lode of mineral-bearing rock in place within the general mass or the mountain and is subject to disposition under the lode mining laws.

Harry Lode Mining Claim, In re, 41 L. D. 403, p. 408.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 836.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 481.

4. WHAT DOES NOT CONSTITUTE.

Ore disseminated at intervals, or found in channels, chutes, cavities, pockets, of other irregular occurrences at intervals in quartzite, without ore connections between the same, is not a vein or lode within the meaning of the statute.

Cheesman v. Shreeve, 40 Fed. 787, p. 789.

A lode claim can not be located on a vein or lode where its continuity is broken by intervening nonmineral ground.

Andromeda Lode, In re, 13 L. D. 146.
 Bi-metallic Min. Co., In re, 15 L. D. 309.
 Howard, In re, 15 L. D. 504.
 Mabel Lode, In re, 26 L. D. 675, p. 676.

Where deposits of ore are only found in vugs in small quantities, lying in no general direction, widely separated, and found in excavations only after driving a tunnel for a considerable distance through hard quartz rock, and where such vugs of ore lay in detached cavities, more or less like a trough, and wholly surrounded by or enveloped in such quartzite rock, such deposits would not constitute a vein or lode within the meaning of this statute.

Cheesman v. Shreeve, 40 Fed. 787, p. 794.

The term vein or lode can not be applied to every metalliferous zone of country to which boundaries can be found, as this would reduce all mining districts to one lode.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.
 Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 54.
 See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

A deposit of marble is not mineral-bearing rock within the meaning of the statute, and does not contain any of the minerals named in the statute or any other mineral substance distinct from the rock itself, and can not, therefore, be located under the provisions of this section.

Henderson v. Fulton, 35 L. D. 652, p. 664.

5. WHAT CONSTITUTES A LODGE.

The term "lode" simply means the formation by which a miner can be led or guided and is an alteration of the verb "lead," and whatever a miner can follow expecting to find ore is a lode.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.
 See Henderson v. Fulton, 35 L. D. 652, p. 656.
 Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 535.
 Moxon v. Wilkinson, 2 Mont. 421.
 Montana Coal, etc., Co. v. Livingston, 21 Mont. 59.
 Noyes v. Clifford, 37 Mont. 138, p. 149.

A lode as understood and used by miners is a vein containing ore.

Montague v. Dobbs, 9 C. L. O. 165, p. 166.

The words "vein," "lode," and "ledge" are used as synonymous terms in the common parlance of miners as well as in the statute and decisions of courts.

Synnott v. Shaughnessy, 2 Idaho 111, p. 116.

A body of mineral or mineral-bearing rock in the general mass of the mountain, so far as it may continue unbroken and without interruption, may be regarded as a lode, whatever the boundaries may be, and in the existence and to the extent of such body boundaries are implied.

Hyman v. Wheeler, 29 Fed. 347, p. 353.
 Cheesman v. Shreeve, 40 Fed. 787, p. 795.

A lode consists of (1) quartz or rock held in place, and (2) the presence therein of gold, silver, cinnabar, lead, tin, copper, or other valuable deposits.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.
 Palmer, In re, 38 L. D. 294, p. 297.

In order to constitute a lode it is not necessary that the minerals shall be evenly distributed throughout the zone or belt, but it may carry pay streaks near either side or in its center, while in some places the zone may be nearly barren of mineral and

in others disclose pockets rich in minerals; and parts of it may carry ore of a very low grade, while other parts contain valuable mineral deposits.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.

A belt or zone, in order to constitute a lode, must bear some of the minerals or valuable deposits mentioned in this section.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.

While the elements of a vein or lode are the body of mineral or mineral-bearing rock and boundaries, yet a body of mineral or mineral-bearing rock in the general mass of the mountain, so far as it may continue unbroken and without interruption, may be regarded as a lode, whatever the boundaries are, as boundaries are implied.

Hyman v. Wheeler, 29 Fed. 347, p. 355.

Cheesman v. Shreeve, 40 Fed. 787, p. 794.

An irregular mass of mineral matter is within the meaning of the descriptive terms "vein" or "lode."

Stevens v. Williams, 23 Fed. Cas. 40.

Breece Min. Co., In re, 3 L. D. 11, p. 13.

Whatever a miner would follow with the expectation of finding ore has been adopted and may be regarded as a practical test of what is to be considered a lode under this section.

Henderson v. Fulton, 35 L. D. 652, p. 661.

King Solomon Tunnel Dev. Co. v. Mary Verna Min. Co., 22 Colo. App. 528, p. 538.

Ambergis Min. Co. v. Day, 12 Idaho 108, p. 115.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 103 U. S. 839.

Harrington v. Chambers, 3 Utah 94.

Broken, crushed, disintegrated, fissured limestone, between a wall of quartzite on one side, and a belt of clay or shale on the other, and which is permeated in all directions with minerals, constitutes a lode, within the meaning of this statute.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 943.

Book v. Justice Min. Co., 58 Fed. 106, p. 127.

A mineral zone held in place and continuous in its formation between the country rock possesses one of the characteristics necessary to constitute a lode.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.

Whenever a miner finds a valuable mineral deposit in the body of the earth he calls it a lode, whatever its form may be and however it may be situated, and whatever its extent in the body of the earth.

Stevens v. Williams, 23 Fed. Cas. 44, p. 45.

While metalliferous rock in place may be so found within defined boundaries as to require recognition as a lode though not in a fissure, yet a broad metalliferous zone can not be permitted to swallow up under the name of lode true fissure veins found within its limits.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

6. ROCK IN PLACE.

If the ore body is continuous to the extent that it may maintain that character then it is in place.

Iron Silver Min. Co. v. Cheesman, 8 Fed. 297, p. 301.

A vein or lode to be in place within the meaning of this section, means in the general mass of the mountain, as distinguished from being upon the surface or covered only by the movable parts called slide or débris, and if in the general mass of the

mountain it is still in place, though the inclosing rocks may have sustained fractures and dislocations in the general movement or upheaval of the country.

Stevens v. Gill, 23 Fed. Cas. 12, p. 13.

See Stevens v. Williams, 23 Fed. Cas. 44.

A vein or lode, to be locatable and patentable under the mining laws, must possess the elements of rock in place bearing one or more of the minerals specified in the statute, or some other mineral that would be embraced within the added words "other valuable deposits."

Henderson v. Fulton, 35 L. D. 652, p. 663.

Sand rock or sedimentary sandstone formation in the general mass of the mountain, bearing gold, is rock in place bearing mineral and constitutes a vein or lode within the purview of the statute, and can be located and entered only under the law applicable to lode deposits.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 407.

Palmer, In re, 38 L. D. 294, p. 297.

A vein or lode in place means a vein or lode lying in a fixed position in the general mass of country rock, or in the general mass of the mountain, and as distinguished from such country rock the vein or superficial deposit may have been brought into its present position by the elements, have been washed down from above, or have come there as alluvium or diluvium from a considerable distance.

Stevens v. Williams, 23 Fed. Cas. 44, p. 45.

Mineral found at a depth of several hundred feet with the rock on either side fixed solid and immovable, no matter where it was originally found or deposited, is in place within the meaning of the law.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 484.

Jones v. Prospect Mountain Min. Co., 21 Nev. 339.

This section makes a distinction between rock or quartz held in place by the adjoining country rock and bunches or blotches of rock or quartz simply lying or resting on the earth's surface without any walls, and also pieces or bowlders detached from the earth's crust usually found in mountain gulches and along the beds of streams in mineral country.

Meydenbauer v. Stevens, 78 Fed. 787, p. 790.

A vein or lode can not be in place under this section unless it is within the general mass of the mountain, and it must be inclosed by or held within the general mass of fixed and immovable rock, and it is not enough to find a vein or lode lying on the top of a fixed or immovable rock, though covered with the superficial mass of loose material and débris.

Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas. 98, p. 99.

A body of rock or quartz in place having clearly defined walls and of great width and continuing for a long distance sinking deep into the earth's crust is not a lode if it is totally barren of mineral.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.

A mining locator is not required to know the manner in which a mineral deposit had its origin, whether mineralized waters have ascended from below through fissures in the rock and deposited their solutions therein or whether the deposit has been washed into the fissures by the elements, or brought from a distance as alluvium, but it is sufficient for him to know that a mineral deposit is in place between walls of rock, is a lode, and may be located as a lode claim.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 485.

7. PROOF OF EXISTENCE—QUESTION OF FACT.

Whether a particular vein or lode is such a one as is referred to in these sections is a question of fact and not of law.

Bluebird Min. Co. v. Largey, 49 Fed. 289, p. 290.
 Illinois Silver Min., etc., Co. v. Raff, 7 N. Mex. 336, p. 339.
 See Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 537.
 Hyman v. Wheeler, 29 Fed. 347.

Any dispute as to whether a given parcel of land is a vein or lode is a question of fact to be determined by men experienced in mining, and it can not be determined as a matter of law.

Blue Bird Min. Co. v. Largey, 49 Fed. 289, p. 292.
 See Columbia Copper Min. Co. v. Dutchess Min., etc., Co., 13 Wyo. 244, p. 256.

A determination as to what is a vein, lode, or ledge of rock in place bearing gold or silver, or other precious metals, must be arrived at from the evidence of miners, as a question of fact, and their understanding of the meaning of these terms must control or give meaning to the acts of Congress.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.
 Bluebird Min. Co. v. Largey, 49 Fed. 289, p. 290.
 Gregory v. Pershbaker, 73 Cal. 109, p. 115.
 See Overman Silver Min. Co. v. Corcoran 15 Nev. 147.

Columbia Copper Min. Co. v. Dutchess Min., etc., Co. 13 Wyo. 244, p. 256.

A party seeking to prove the existence of a lode or vein may rely upon any characteristics that he can find in the ground in dispute and prove the same by witnesses who accept such features as establishing the fact, while the opposite party may disprove the proposition by showing the absence of all other characteristics of a vein or lode.

Hyman v. Wheeler, 29 Fed. 347, p. 353.
 Cheesman v. Shreeve, 40 Fed. 787, p. 794.

There are four classes of cases where the courts have been called upon to determine what constitutes a lode or vein within the intent and meaning of the different sections of the Revised Statutes: (1) As between miners who have located on the same lode under this section; (2) as between placer and lode claimants under section 2333; (3) between mineral claimants and parties holding town-site patents to the same; (4) between mineral and agricultural claimants of the same land.

Migeon v. Montana Central R. Co., 77 Fed. 249, pp. 254-255.
 Shoehone Min. Co. v. Rutter, 87 Fed. 801, p. 807.
 Ambergris Min. Co. v. Day. 12 Idaho 108, p. 117.
 Fox v. Myers, 29 Nev. 169, p. 183.
 See Henderson v. Fulton, 35 L. D. 652, p. 659.

Grand Central Min. Co. v. Mammoth Min. Co., 29 Utah 490, p. 574.

Proof of ore in mass and a position in the body of a mountain is sufficient to show the existence of a lode of the dimensions of such ore, and so far as it prevails the ore is a lode, whatever its form or structure may be, and it is unnecessary to decide any question of fissures, contacts, selvages, slickensides, or other marks of distinction.

Hyman v. Wheeler, 29 Fed. 347, p. 353.
 Cheesman v. Shreeve, 40 Fed. 787, p. 793.

In determining either the fact or the likelihood of the existence of a vein or lode of ore a court or jury may consider the topography of the mountain, its geological formation, with its sands, limes, porphyry, quartzite, and granite formation, together with the mineralized rock in body and detachments.

Cheesman v. Shreeve, 40 Fed. 787, p. 795.

The presence of a vein or lode may be determined by assay and analysis.

Hyman v. Wheeler, 29 Fed. 347, p. 354.

Certain geological formations and strata and substances and fissures are the usual concomitants and incidents of the presence of an ore vein, and in tracing out the lay and trend of ore deposits the presence or absence of such concomitants is important.

Cheesman v. Shreeve, 40 Fed. 787, p. 796.

Proof that the strata lying along the plane of contact between blue and brown limestone has mineralized to the extent of showing value in gold and silver, and distinguishable from other parts of the mountain by carrying ore and by association with the plane of contact, may constitute a mineralized zone, and such a zone is clearly a vein or lode within the meaning of this statute.

Hyman v. Wheeler, 29 Fed. 347, p. 355.

Cheesman v. Shreeve, 40 Fed. 787, p. 793.

Proof of a barren contact between blue and brown limestone is not sufficient to establish a vein or lode, but it must carry ore to some extent and of some value to constitute such vein or lode.

Hyman v. Wheeler, 29 Fed. 347, p. 355.

The determination of the question as to whether a given deposit is a vein, lode, or ledge does not constitute a Federal question within the meaning of the statute giving Federal courts jurisdiction and the right to remove a cause to a Federal court.

Bluebird Min. Co. v. Largey, 49 Fed. 289, p. 291.

C. MINING LOCATIONS OR CLAIMS.

1. NATURE AND EFFECT.
2. "LOCATION" AND "MINING CLAIM"—USE AND MEANING.
3. MADE ON UNAPPROPRIATED PUBLIC LANDS.
4. LOCATION ON VEIN OR LODGE.
5. LOCATION ON APEX OF VEIN.
6. MANNER AND METHOD OF MAKING.
7. AGREEMENTS TO LOCATE—GRUBSTAKE CONTRACTS.
8. WHO MAY MAKE—QUALIFICATIONS OF LOCATOR.
9. EFFECT OF LOCATION—RIGHTS OF LOCATOR.
10. EXTRALATERAL RIGHTS.
11. RELOCATION.
12. FORM, EXTENT AND DIMENSIONS.
 - a. LOCATIONS LENGTHWISE OF LODGE.
 - b. MEASUREMENTS DETERMINED BY VEIN OR LODGE.
 - c. PARALLELOGRAM IN FORM.
 - d. LENGTH AND WIDTH OF LOCATION.
13. DISCOVERY ESSENTIAL.
 - a. OBJECT AND NATURE OF REQUIREMENT.
 - b. DISCOVERY AS INITIAL ACT.
 - c. DISCOVERY A PREREQUISITE.
 - d. BASIS OF RIGHTS AND SOURCE OF TITLE.
 - e. DISCOVERY A UNIT.
 - f. WHAT CONSTITUTES—ROCK IN PLACE.
 - g. DISCOVERY WITHIN LIMITS OF LOCATION.
 - h. DISCOVERY OUTSIDE OF LOCATION—EFFECT.
 - i. DISCOVERY SHAFT.

13. **DISCOVERY ESSENTIAL—Continued.**
 - j. **ORDER OF STEPS IMMATERIAL—CONDITIONS.**
 - k. **PRIORITY OF DISCOVERY—EFFECT AND RIGHTS.**
 - l. **SUFFICIENCY OF DISCOVERY.**
 - m. **EXTENT AND VALUE OF DISCOVERY.**
 - n. **DISCOVERY INSUFFICIENT.**
 - o. **DISCOVERY A QUESTION OF FACT.**
 - p. **KINDS OF MINERAL.**
 - q. **KINDS OF MINERAL—INSTANCES.**
14. **SURFACE LINES.**
 - a. **LOCATION AND DIRECTION OF SIDE LINES.**
 - b. **LOCATION AND DIRECTION OF END LINES.**
 - c. **PARALLELISM OF END LINES—PURPOSE.**
 - d. **WANT OF PARALLELISM OF END LINES—EFFECT.**
 - e. **LINES LAID UPON SENIOR LOCATION—EFFECT.**
15. **LOCATIONS ON EXISTING CLAIMS.**
 - a. **LOCATIONS INVALID.**
 - b. **OVERLAPPING CLAIMS—EFFECT AND VALIDITY.**
 - c. **LOCATIONS BY FORCE OR FRAUD INVALID.**
 - d. **LOCATION WHERE SENIOR LOCATION IS VOID.**
16. **EXCESSIVE LOCATION—EFFECT AND VALIDITY.**
17. **POSSESSION OF CLAIM—HOW FAR ESSENTIAL.**
18. **MINING LOCATION AS PROPERTY.**
19. **NUMBER OF CLAIMS UNLIMITED.**
20. **LODE AND PLACER CLAIMS—RELATIVE RIGHTS OF LOCATORS.**
21. **STATE REGULATIONS—VALIDITY.**
22. **RULES AND CUSTOMS OF MINERS.**
23. **LOCATION NOTICE—SUFFICIENCY AND EFFECT.**
24. **TAXATION OF MINING CLAIMS.**

1. NATURE AND EFFECT.

Lode mining claims must conform to the vein or lode, and it would be impracticable if not impossible to make them always conform to the public surveys, and section 2327 expressly provides that they need not conform to the public surveys.

Washington v. Ross, 55 Wash. 242, p. 244.

The right of location upon the mineral lands of the United States is a privilege granted by Congress, but it can only be exercised within the limits prescribed by the grant.

Belk v. Meagher, 104 U. S. 279, p. 284.

Peoria & Colorado Min., etc., Co. v. Turner, 20 Colo. App. 474, p. 479.

A location of a mining claim is not made by taking possession alone, but by working on the ground, recording and doing whatever else is required for that purpose by the acts of Congress and the local laws and regulations.

Belk v. Meagher, 104 U. S. 279, p. 284.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 346.

Yard, In re, 38 L. D. 59, p. 64.

- Ware v. White, 81 Ark. 220, p. 228.
 Sweet v. Webber, 7 Colo. 443, p. 450.
 Saxton v. Perry, 47 Colo. 263, p. 277.
 Ambergis Min. Co. v. Day, 12 Idaho 108, p. 120.
 Garfield Min., etc., Co. v. Hammer, 6 Mont. 53, p. 59.
 Purdum v. Laddin, 23 Mont. 386, p. 389.
 Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, p. 63.
 Nash v. McNamara, 30 Nev. 114.
 Lockhart v. Wills, 9 N. Mex. 344, p. 357.
 Patterson v. Tarbell, 26 Oreg. 29, p. 35.
 Wright v. Lyons, 45 Oreg. 167, p. 170.
 See Book v. Justice Min. Co., 58 Fed. 106.
 Horswell v. Ruiz, 67 Cal. 111.
 Noyes v. Black, 4 Mont. 527.
 Upton v. Larkin, 5 Mont. 600, p. 603.
 Tibbitts v. Ah Tong, 4 Mont. 536.
 Lalande v. McDonald, 2 Idaho 283, p. 288.
 Work Min., etc., Co. v. Doctor Jack Pot Min. Co., 194 Fed. 620, p. 625.

Location is the act or series of acts by which the right of exclusive possession of mineral veins and the surface of mineral lands is vested in the locator.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 346.

The word "location" as a mining term is frequently used in a more restricted sense to portray the placing of the claim, the posting of the notice containing the name of the lode, the name of the locator, and the date of discovery, and the marking of the boundaries of the claim without the discovery.

Uinta Tunnel Min., etc., Co. v. Ajax Gold Min. Co., 141 Fed. 563, p. 566.

The mere posting of a discovery notice is not sufficient to constitute a valid location of a mining claim, but there must be a discovery and the exterior boundaries of the claim properly marked.

Nicholls v. Lewis & Clark Min. Co., 18 Idaho 224, p. 232.

The location of a mining claim is the act of appropriating a parcel of public mineral land in accordance with the provisions of the mining laws. The term is also applied to the parcel of land appropriated.

Tomera Placer Claim, In re, 33 L. D. 560.

See Smelting Co. v. Kemp, 104 U. S. 636, p. 649.

Territory v. Mackey, 8 Mont. 168, p. 173.

The location is the initial step taken by the locator to indicate the place and extent of the surface which he desires to acquire, and it includes the giving of notice.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 74.

Under the act of July 26, 1866 (14 Stat. 251), the location was of the lode; but under the act of May 10, 1872, the location is that of a piece of land containing the top or apex of a lode.

St. Louis Min. Co. v. Montana Min. Co., 194 U. S. 235, p. 238.

The existence of a vein or lode is necessary to the making of a valid location, as the thing located is the mineral bearing vein or lode, and the surface ground taken along such vein or lode is an incident thereto and intended to facilitate the convenient and safe working of the mine.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

It is sufficient to give a right to the occupant of mining ground on the Government domain to show its appropriation by such occupant by means which are a substantial compliance with the law and which, in view of the surrounding circumstances, will give notice to those who have a right to know that the particular mining ground is subject to the dominion and control of a private claimant.

Eilers v. Boatman, 3 Utah 159, p. 164.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 419.

2. "LOCATION" AND "MINING CLAIM"—USE AND MEANING.

The terms "location" and "mining claim" are often used indiscriminately to denote the same thing.

- Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 74.
 See Smelting Co. v. Kemp, 104 U. S. 636, p. 649.
 Creede, etc., Min. Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 347.
 Poire v. Wells, 6 Colo. 406, p. 412.
 Territory v. Mackey, 8 Mont. 168, p. 173.

The term "claim" means the surface ground claimed in connection with a lode.

Branagan v. Dulaney, 2 L. D. 744, p. 750.

A mining claim is a parcel of land containing precious metal in the soil or rock and a location is the act of appropriating such parcel of land according to law or to certain established rules.

- Smelting Co. v. Kemp, 104 U. S. 636, p. 649.
 Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657, p. 661.
 Poire v. Wells, 6 Colo. 406, p. 412.
 Hawke v. Deffeback, 4 Dak. 20, p. 34.
 Salisbury v. Lane, 7 Idaho 370, p. 385.
 Territory v. Mackey, 8 Mont. 168, p. 173.
 Mammoth Min. Co. v. Juab County, 10 Utah 232, p. 236.

The use of the words "mines or mining claims" is evidently intended to distinguish between cases in which the miner is the owner of the soil, and therefore has perfect title to the mine, and those in which the miner does not have title to the soil, but works the mine under what is well known in the mining districts and what is recognized by the act of Congress as a "mining claim."

- Forbes v. Gracey, 94 U. S. 762, p. 766.
 Black v. Elkhorn Min. Co., 49 Fed. 549, p. 550.

A lode claim embraces a definite tract of land, but the lode discovered therein is the principal thing and the surface ground only incidental thereto, and may or may not contain lode mineral.

American Smelting & Refining Co., In re, 39 L. D. 299, p. 302.

A difference exists between a vein or lode, and a vein or lode mining claim in that a vein or lode may be entirely concealed beneath the surface of the earth and not known to exist, while a lode mining claim is on the surface, exposed to view, and designated by stakes and monuments so that its boundaries may be readily traced.

Mantle v. Noyes, 5 Mont. 274, p. 289.

3. MADE ON UNAPPROPRIATED PUBLIC LANDS.

In order to establish any title under the mining laws each party must show a location upon unappropriated territory.

- Girard v. Carson, 22 Colo. 345, p. 347.
 See Gwillim v. Donnellan, 115 U. S. 45.

All mineral locations are required to be made on the public domain.

- Howard, In re, 15 L. D. 504, p. 505.
 Engineer Min., etc., Co., In re, 8 L. D. 361.
 Correction Lode, In re, 15 L. D. 67.
 See Brown v. Gurney, 201 U. S. 184, p. 191.
 Swanson v. Kettler, 17 Idaho, 321, p. 334.

The rights granted to locators under this section are restricted to such locations on veins and lodes as may be situated on the public domain.

Cayuga Lode, In re, 5 L. D. 703, p. 704.

No right can be initiated upon Government lands which are in the actual possession of another by a forcible, fraudulent, or clandestine entry thereon.

- Mower v. Fletcher, 116 U. S. 380, p. 385.
 Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 317.
 Cowell v. Lammers, 21 Fed. 200, p. 202.
 Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, pp. 674, 680.
 Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 17.
 McBrown v. Morris, 59 Cal. 64, p. 72.
 Goodwin v. McCabe, 75 Cal. 584, p. 588.
 Rourke v. McNally, 98 Cal. 291.
 McLemore v. Express Oil Co., 158 Cal. 559, p. 562.
 Nickals v. Winn, 17 Nev. 188, p. 193.
 Nash v. McNamara, 30 Nev. 114, p. 134.
 See Big Three, etc., Co. v. Hamilton, 157 Cal. 130, p. 143.

A valid claim to unappropriated public mineral land can not be instituted while it is in the possession of another who has the right to its possession under an earlier lawful location.

- San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 834.
 Duffield v. San Francisco Chemical Co., 205 Fed. 480; reversing Duffield v. San Francisco Chemical Co., 198 Fed. 942.
 See Thallmann v. Thomas, 111 Fed. 277.
 Seymour v. Fisher, 16 Colo. 188.
 Mount Rosa Min., etc., Co. v. Palmer, 26 Colo. 56.
 Risch v. Wiseman, 36 Ore. 484.

One person can not locate ground for a mining claim of which another is in actual possession under claim or color of right; and especially where the person in possession is sinking a discovery shaft or is in good faith engaged in labor in complying with the mining laws.

- Price v. McIntosh, 1 Alaska 286, p. 301.
 Redden v. Harlan, 2 Alaska 402, p. 407.
 Bulette v. Dodge, 2 Alaska 427, p. 431.
 Biglow v. Conradt, 3 Alaska 134, p. 140.
 See Atherton v. Fowler, 96 U. S. 513, p. 515.
 Eilers v. Boatman, 111 U. S. 356, p. 357.
 McIntosh v. Price, 121 Fed. 716.
 McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308.
 Miller v. Chrisman, 140 Cal. 440.
 Weed v. Snook, 144 Cal. 439.

The actual possession of a tract of public land is valid as against a mere intruder or one having no higher or better right than the prior occupant, and no mining right or title can be initiated by a violent or forcible invasion of another's actual occupancy.

Ritter v. Lynch, 123 Fed. 930, p. 932.

Where there is no valid existing location upon mineral lands of the United States any competent locator may enter even if it is in the actual possession of another, provided he can do so peaceably and in good faith, in order to initiate a location for himself; but no such right upon any such land, whether mineral or agricultural, which is in the actual possession of another, can be initiated by a forcible, fraudulent, surreptitious, or clandestine entry thereon.

- Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 680.
 Atherton v. Fowler, 96 U. S. 513.
 Belk v. Meagher, 104 U. S. 279.
 Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 46.
 Phillips v. Smith, 11 Ariz. 309, p. 314.
 Miller v. Chrisman, 140 Cal. 440, p. 446.
 McLemore v. Express Oil Co., 158 Cal. 559, p. 562.
 Nash v. McNamara, 30 Nev. 114, p. 127.
 Whiting v. Straup, 17 Wyo. 1, p. 23.
 See McGuire v. Brown, 106 Cal. 660, p. 670.
 Weed v. Snook, 144 Cal. 439.
 Moffatt v. Blue River Gold, etc., Co., 33 Colo. 142.
 Walsh v. Henry, 38 Colo. 393.

A valid claim to mineral lands or to a mining claim on unappropriated public lands can not be instituted while it is in the possession of another who has the right to such possession under an earlier valid location.

Thallman v. Thomas, 111 Fed. 277, p. 278.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 834.

Seymour v. Fisher, 16 Colo. 188.

Risch v. Wiseman, 36 Oreg. 484.

See Heine v. Roth, 2 Alaska 416, p. 424.

As a proceeding to locate a mining claim is one in which the United States is not directly an actual party, but is done by the locator alone, so that he may take what the United States has by statute offered to give, it is clear that there can be nothing to take until there is an offer to give.

Belk v. Meagher, 104 U. S. 279, p. 285.

Naeh v. McNamara, 30 Nev. 114.

No title from the Government can be obtained for mineral land except by a location made according to law, and every competent locator has the legal right to initiate a claim to any unappropriated public land by a peaceable adverse entry thereon, though it is in the possession of those who have no superior right to acquire the title or hold the possession.

Ritter v. Lynch, 123 Fed. 930, p. 932.

After a legal mineral location has been made a claim may not be initiated for the same land under the settlement laws unless, on proof furnished, it is shown that the location is invalid, or that the ground is not mineral, or that no discovery has been made.

Clark v. Ervin, 16 L. D. 122, p. 123.

A mining claim can not be located so that one line or boundary is below high-water mark of a river, as this is not public land within the meaning of the mining laws.

Argillite Ornamental Stone Co., In re, 29 L. D. 585, p. 587.

Heine v. Roth, 2 Alaska 416, p. 426.

A lode claim may be located and established on lands returned as agricultural, on proof that the claim itself is mineral in character and that the land in the immediate proximity of the claim is not adapted to agriculture, and in such case a segregation survey may be had at the expense of the mineral claimant.

Creswell Min. Co. v. Johnson, 8 L. D. 440, p. 442.

Lannon v. Pinkston, 9 L. D. 143.

This section refers to lode locations which do not conflict with any other class of mineral locations, and does not apply to lode locations within the limits of a placer claim.

Mount Rosa Min., etc., Co. v. Palmer, 26 Colo. 56, p. 65.

4. LOCATION ON VEIN OR LODE.

This section permits mining claims to be located only upon veins or lodes of quartz or other rock in place carrying gold, silver, copper, and other minerals named, or other valuable deposits.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 50.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 835.

Montague v. Dobbs, 9 C. L. O. 165.

Ambergris Min. Co. v. Day, 12 Idaho 108, p. 122.

This section contemplates that the location of a lode or vein claim shall be along the course of such lode or vein.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478, p. 485.

See Catron v. Old, 23 Colo. 433, p. 437.

The surface should be located in conformity with the course of the vein.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 457.

Dwinnel v. Dyer, 145 Cal. 12, p. 20.

Paul v. Cragnaz, 25 Nev. 293, p. 328.

This section treats of mining claims upon veins or lodes of quartz or other rock in place bearing gold.

Gregory v. Pershbaker, 73 Cal. 109, p. 114.

Veins or lodes may be located and patented only under the law applicable to veins or lodes.

Henderson v. Fulton, 35 L. D. 652, p. 665.

The law fixes no limit to the size or prominence of a mineral-bearing vein before a mining location can be made thereon.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 601.

The law contemplates that a locator of a mining claim shall make his location on one vein, and while certain rights attach to other veins whose top or apex is within its surface boundaries, yet but one vein can be made the basis of his location.

Helvetia Lode, In re, Copp's Min. Lands 276, p. 279.

A surveyor general should not approve any survey until the course of the vein is actually determined or admitted by the claimant to lie in some stated probable direction.

Monarch of the North Claim, In re, Copp's Min. Lands 304, p. 305.

A court has no power to make a new location of a mining claim for every vein that may be found within the surface lines of such location and thereby enlarge the rights of the original locator.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 557.

5. LOCATION ON APEX OF VEIN.

Locations under this section must be made with reference to the top or apex of the vein or lode.

Stevens v. Williams, 23 Fed. Cas. 44, p. 46.

The top or apex of a vein must be within the boundaries of a claim in order to enable the locator to perfect his location and obtain title, but the apex is not necessarily a point, but may be a line of great length; and if a portion is found within the limits of a claim it is a sufficient discovery to enable the locator to obtain title.

Poplar Creek Consol. Quartz Mine, In re, 16 L. D. 1, p. 2.

Larkin v. Upton, 144 U. S. 19, p. 20.

Debney v. Iles, 3 Alaska 438, p. 451.

The apex of a horizontal lode or vein, or a blanket vein, as it is generally called, may be regarded as coextensive with the distance between the side lines of a location, and every point or part of it is as much the middle of the vein as any other part within the meaning of this section.

Homestake Min. Co., In re, 29 L. D. 689, p. 691.

The apex of a vein is not necessarily a point, but in fact is often a line of great length.

Larkin v. Upton, 144 U. S. 19, p. 23.

Debney v. Iles, 3 Alaska 438, p. 451.

6. MANNER AND METHOD OF MAKING.

This section provides mainly the method of locating a mining claim.

Harper v. Hill, 159 Cal. 250, p. 253.

The order in which the several steps necessary to a valid location of a mining claim are performed is not essential, except so far as one is dependent upon the other.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 352.

A mining claim must be located upon at least one known vein or lode, but the vein or lode is not the entire claim, as a claim may be 600 feet wide though the known vein or lode to include which it is located is not 12 inches in width.

Mt. Diablo, etc., Min., Co. v. Callison, 17 Fed. Cas. 918.

The course of a vein or lode as actually found to exist in the earth, either at its outcrop at the surface or by exploration beneath the surface, may control or determine the manner of the location within the prescribed limitations as to length, width, and end lines; and in order to conform the location to the actual course of the vein the side lines may be irregular, and the location is not required to be in any particular form except the end lines must be straight and parallel, but the locator of a blanket vein, where the ore body covers the entire area within the limits of the side and end lines, and the apex of the vein is regarded as coextensive with the space between the side lines and every part or point of such apex is as much the middle of the vein as any other part, can not assume that the apexing vein exists in certain portions of his claim as distinguished from other portions, and that the course of the vein runs in an irregular and zigzag manner as may best suit his purpose in laying his side and end lines of his location.

Belligerent & Other Lode Min. Claims, In re, 35 L. D. 22, p. 25.

See Homestake Min. Co., In re, 29 L. D. 689.

7. AGREEMENTS TO LOCATE—GRUBSTAKE CONTRACTS.

A grubstake contract is an agreement between two or more persons to locate mines upon the public lands by joint effort, labor, and expense, and by which each is to acquire an interest in claims as agreed upon by the contract.

Cascaden v. Dunbar, 2 Alaska 408, p. 412.

Marks v. Gates, 2 Alaska 519, p. 523.

Elliott v. Elliott, 3 Alaska 352, p. 365.

See Berry v. Woodburn, 107 Cal. 504, p. 512.

Murley v. Ennis, 2 Colo. 300.

Meylette v. Brennan, 20 Colo. 242.

Hartney v. Gosling, 10 Wyo. 346.

A grubstake contract, though oral, is not within the statute of frauds.

Cascaden v. Dunbar, 2 Alaska 408, p. 413.

Marks v. Gates, 2 Alaska 519, p. 524.

Elliott v. Elliott, 3 Alaska 352, p. 365.

See Book v. Justice Min. Co., 58 Fed. 106.

Gore v. McBrayer, 18 Cal. 582.

Moritz v. Lavalle, 77 Cal. 10.

Hibour v. Reeding, 3 Mont. 15.

Welland v. Huber, 8 Nev. 203.

Grubstake contracts will be enforced by the courts and persons claiming under such contracts must prove the terms and show that rights have become vested.

McMahon v. Meehan, 2 Alaska 278, p. 282.

See Cisma v. Mallory, 84 Fed. 851.

8. WHO MAY MAKE—QUALIFICATIONS OF LOCATOR.

This section restricts the right of exploration and purchase of the public mineral lands to citizens of the United States and those who have declared their intention to become such.

Igo Bridge Extension Placer, In re, 38 L. D. 281, p. 282.

This section repeals section 2 of the act of July 26, 1866, and gives qualified citizens of the United States the right to locate and acquire by means of lode mining claims veins or lodes of quartz or other rock in place bearing gold, silver, copper, lead, tin, or other valuable deposits.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 205.

It is not necessary as a matter of law that the locator should be the first discoverer of mineral upon the land in order to make a valid location; however, he must not only have knowledge of the former discovery, but he must adopt such actual discovery and claim the same in order to give validity to his location.

Book v. Justice Min. Co., 58 Fed. 106, p. 128.
 Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 679.
 Jupiter Min. Co. v. Bodie, etc., Min. Co., 11 Fed. 666, p. 676.

A location on account of the discovery of a vein or lode can only be made by a discoverer or one who claims under him.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.
 Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 414.

This section gives a discoverer a right to locate a claim to the exclusion of others, and if a discovery is made by two parties, but one location can be made by them as to a single discovery only.

Poplar Creek Consol. Quartz Mine, In re, 16 L. D. 1, p. 2.

The location of a mining claim can not be sustained where it is not made in the names of bona fide locators.

Cook v. Klonos, 164 Fed. 529, p. 537.

A location on account of the discovery of a vein or lode can only be made by the discoverer, or one claiming under him, and if the title to the discovery fails, so must the location which rests upon it.

Aurora Lode v. Bulger Hill, etc., Placer, 23 L. D. 95, p. 99.

The mining laws do not prohibit a person from initiating a location of a mining claim by an agent, as it is not necessary that he should personally act in taking up a mining claim, or in doing acts required to give evidence of an appropriation, or to perfect the appropriation.

McCulloch v. Murphy, 125 Fed. 147, p. 149.

The validity of a mining location is destroyed on a transfer of a claim to a person not authorized either to make the location or to keep it alive.

Manuel v. Wulff, 152 U. S. 505, p. 510.
 Lohman v. Helmer, 104 Fed. 178, p. 181.
 Tibbitts v. Ah Tong, 4 Mont. 536.

The declaration of intention to become a citizen by an alien after the location by him of a mining claim relates back to the date of such location, and in the absence of adverse rights attaching prior to the date of such declaration operates to validate the location.

Lone Jack Min. Co. v. Megginson, 82 Fed. 89, p. 93.

9. EFFECT OF LOCATION—RIGHTS OF LOCATOR.

The location of a mining claim has the effect of a grant from the Government to the locator of a right to the exclusive possession and enjoyment of all the surface ground included within the lines of his location.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378.
 Tyeo Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 450.

A valid location of a mining claim segregates the area from the public domain, and it becomes the property of the locator, and he may sell it, mortgage it, or part with the whole or any portion as he sees fit.

Manuel v. Wulff, 152 U. S. 505, p. 510.
 Black v. Elkhorn Min. Co., 163 U. S. 445, p. 449.
 Saint Louis Min., etc., Co. v. Montana Min. Co., 171 U. S. 650, p. 655.
 Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 231.
 Gillis v. Downey, 85 Fed. 483, p. 486.

Swanson v. Kettler, 17 Idaho 321, p. 331.

Nash v. McNamara, 30 Nev. 114, p. 133.

See South End Min. Co. v. Tinney, 22 Nev. 19, p. 62.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 271.

The location as made on the surface by the locator determines the extent of his rights below the surface.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.

See Hustler and New Year Lode, In re 29 L. D. 668, p. 672.

A valid location appropriates the surface and the rights given by such location can not be disturbed by the acts of third persons. The rights on or beneath the surface passing to the first locator can not be diminished or affected by a subsequent location.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 79.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 542.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 601.

Peoria & Colorado Min., etc., Co. v. Turner, 20 Colo. App. 474, p. 480.

The location of mineral ground gives to the locator before discovery, and while he complies with the statutes of the United States and of the State and with local rules and regulations of miners, the valuable right of possession against all intruders to all the surface within the lines of his location, and during such time the ground so segregated is not open to location by another, and this right he can convey to another.

Rooney v. Barnette, 200 Fed. 700, p. 710.

See Becker v. Long, 196 Fed. 721.

Swanson v. Sears, 224 U. S. 180.

Miller v. Chrisman, 140 Cal. 440, p. 450.

Swanson v. Kettler, 17 Idaho 321.

A mining location upon the surface is not made with the view of getting benefits from the use of the surface but its purpose is to reach the vein which is hidden below and the location is made to measure rights beneath the surface. Each locator should be entitled to make his location so as to reach as much of the unappropriated and previously discovered vein as is possible.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 75.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 543.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 602.

Stenfeld v. Espe, 171 Fed. 825, p. 828.

Hidee Gold Min. Co., In re, 30 L. D. 420, p. 425.

A location can create no right superior to a previous valid location, though disputes may arise when locations overlap each other and include the same ground, and the right of possession must then be settled by the courts.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 74.

Mere marking on the surface of a location does not necessarily make the location valid and subsisting, and the ground may be entirely free for another location. The second locator is not required to wait until by judicial proceedings it is established that the prior location is invalid or has failed before he may make a location. He is at liberty to make his location at once, and he may then, in the manner provided by statute, test the validity of the other as well as that of his own location.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 77.

See Lavagnino v. Uhlig, 198 U. S. 443.

Title to a horizontal vein or deposit, or blanket vein, may be acquired under the sections relating to veins, lodes, etc.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 400.

Homestake Min. Co., In re, 29 L. D. 689, p. 691.

A mineral entry segregates the land from the mass of the public domain, and it is not open to occupation by others.

Heine v. Roth, 2 Alaaka 416, p. 424.

See Hooper v. Ferguson, 2 L. D. 712, p. 713.

Elda Min., etc., Co., In re, 29 L. D. 279.

10. EXTRALATERAL RIGHTS.

One who locates and acquires title to a vein may follow it to any depth within the end lines of his location, though in its downward course it may enter the land adjoining, and this rule applies to all other veins having their tops within the surface lines of his location extended downward vertically.

Stevens v. Gill, 23 Fed. Cas. 12, p. 13.

Stevens v. Williams, 23 Fed. Cas. 40, p. 41.

By this and section 2322 R. S. there are given, in addition to rights to the surface and the lodes or veins immediately beneath the surface, extralateral, underground, possessory rights to all veins, lodes, and ledges apexing within the vertical surface lines and departing from a perpendicular in their course downward so as to extend outside such lines, but limited to such outside parts of such veins or ledges as shall lie between vertical planes drawn downward through the parallel end lines of the surface location, and so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges.

Hidee Gold Min. Co., In re, 30 L. D. 420, p. 425.

A location as made on the surface by the locator determines the extent of the rights below the surface, and the end lines as established by the locator, and not as they may be established by the Land Department for him, place the limits beyond which he may not go in the appropriation of any vein or veins along their course or strike, except where the location has been placed by mistake across the course or strike of a vein, and in which event the side lines become the end lines of the claim.

Hustler & New Year Lodes, In re, 29 L. D. 668, p. 674.

The provision defining the lateral rights of a claim is a declaration that all of the surface of a lode claim which is within 300 feet of either side of the apex of the vein at its surface, and which is included within the exterior boundaries of the location, is the property of the locator.

McElligott v. Krogh, 151 Cal. 126, p. 132.

Whether the lines of a mining claim were properly laid with respect to a vein or lode outcropping within them, so as to entitle the locator to the extralateral rights defined by the statute, depends upon the probative facts of each particular case.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 583.

See Argonaut Consol. Min. Co. v. Turner, 23 Colo. 400, p. 406.

11. RELOCATION.

A relocation of a mining claim by a third person can not be made after the original entry thereof in the land office, and so long as such entry stands the relocater acquires no rights under such location.

Neilson v. Champagne, etc., Co., 111 Fed. 655, p. 657.

See Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428.

Lavagnino v. Uhlig, 198 U. S. 443.

Neilson v. Champagne Min., etc., Co., 119 Fed. 123.

A relocation of lands actually governed by a valid location at the time is void not only as against the prior locator but as against all the world,

Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 98.

A relocater of a mining claim during the existence of a valid location can make no such location as prevents the land from being in law vacant, and others have the right to enter for the purpose of taking it up, if it can be done peaceably and without force.

Belk v. Meagher, 104 U. S. 279, p. 287.
 Malone v. Jackson, 137 Fed. 878, p. 881.
 Patchen v. Keeley, 19 Nev. 404, p. 410.
 Nash v. McNamara, 30 Nev. 114.

Mining claims are not open to relocation until the rights of former locators have been abandoned, forfeited, or otherwise come to an end, and however regular in form a junior location may be, it is of no effect as against the rights conferred upon a prior locator so long as such prior location is subsisting.

Zerres v. Vanina, 134 Fed. 610, p. 615.
 See Lavagnino v. Uhlig, 198 U. S. 443.
 Porter v. Tonopah North Star., etc., Co., 133 Fed. 756.
 Rose v. Richmond Min. Co., 17 Nev. 25, p. 57.

When a mineral entry is canceled the land from that date becomes subject to location, and the first location thereafter becomes effective from the time of its location if rights thereunder are then being and are thereafter asserted according to the mining law.

Adams v. Polglase, 33 L. D. 30, p. 31.
 Adams v. Polglase, 32 L. D. 477.
 See Noonan v. Caledonia Gold Min. Co., 121 U. S. 393.
 Kendall v. San Juan Min. Co., 144 U. S. 658.

12. FORM, EXTENT AND DIMENSIONS.

a. LOCATIONS LENGTHWISE OF LODGE.

The intent of the statute of July 26, 1866 (14 Stat. 251), and that of May 10, 1872 (17 Stat. 91), is that mining locations on lodes or veins shall be made lengthwise in the general direction of such vein or lode on the surface of the earth where they are discoverable; and that the end lines are to cross such lode or vein and extend perpendicularly downward, and are to be continued in their own direction either way horizontally.

Mining Co. v. Tarbet, 98 U. S. 463.
 Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478, p. 485.
 Helvetia Lode, In re, Copp's Min. Lands 276.

The intent of the mining act is obviously that the position of the vein shall be determined or assumed throughout its whole extent.

Monarch of the North Claim, In re, Copp's Min. Lands 304.

This section limits the surface that may be located along a vein or lode.

Brick Pomeroy Mill Site, In re, 34 L. D. 320, p. 323.

All that a locator can do is to find ore and lay out his claim parallel with the course of the vein as indicated by the surface outcrop, and take what subsequent developments show his location entitles him to.

Empire, etc., Min. Co. v. Tombstone, etc., Min. Co., 131 Fed. 339, p. 343.

The statute proceeds on the theory that a claim on a lode, following its outcroppings on the surface for a certain distance with a definite extension on each side of the middle of the vein, would generally take the form of a parallelogram. It accordingly provided for the length and width of the claim upon a vein at the surface and especially provided that the end lines shall be parallel to each other.

Iron Silver Min. Co. v. Elgin Min., etc., Co., 118 U. S. 196, p. 205.

The mining laws do not warrant the extending arbitrarily and without any basis of fact therefor a vein or lode line of a location in an irregular and zigzag manner for the

purpose of controlling the length and location of the exterior lines of a location to suit the convenience of a locator.

Belligerent & Other Lode Min. Claims, 35 L. D. 22, p. 25.
See *Jack Pot Lode Min. Claim*, In re, 34 L. D. 470.

A lode located in the form of a triangle, which embraces the entire lode or vein claimed, can not be approved unless the lode itself extends into and fills the point in the acute angle, and then only when adverse rights render it necessary.

Morse, In re, 5 C. L. O. 178.

Where a lode intersects another claim and extends within a prior survey or location, it may be patented to the length allowed by law, and if the end of such lode is found within such location, the surface ground may close upon the prior survey, if the extension of the end line within such prior survey, parallel to the other end line, would not include any part of such surface ground.

Morse, In re, 5 C. L. O. 178.

A valid location may be made of three separate claims adjoining each other where the surface area of the three together is equivalent to the amount which this section permits a locator to take or locate on a single lode.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

The limits of a mining claim are defined by its exterior boundaries.

Tomera Placer Claim, In re, 33 L. D. 560, p. 561.

This section regulates the surface dimensions of a mining location.

Noyes v. Clifford, 37 Mont. 138, p. 148.

B. MEASUREMENTS DETERMINED BY VEIN OR LODGE.

The purpose of the provisions of this section is to limit the dimensions of the location and not to prescribe its shape, and the point of measurement selected is the vein, and if the measurements be made along and from the middle of the vein, which departs laterally from its course at a right angle, it is obvious that the statute is satisfied.

Breece Min. Co., In re, 3 L. D. 11, p. 12.

When a vein or lode outcrops at the surface the lateral measurement for the purpose of establishing the width of the claim must be made from the middle of such vein; and when the vein is developed by discovery in a shaft below the surface and the nearest actual surface point is not otherwise discovered, then the point of the vein so discovered must be assumed to be the middle for the purpose of the lateral measurement.

Monarch of the North Claim (Foot), In re, *Copp's Min. Lands* 304, p. 305.
See *Helvetia Lode*, In re, *Copp's Min. Lands* 276, p. 278.

The provisions requiring a measurement of length along the lode or vein and of width from the middle of the vein plainly points to a reason for the selection of the central line of the location instead of the side line, and that reason must have been the possible tortuous course of the vein, as there could be no practical purpose in selecting the middle of the vein as the place of measurement except to provide for an appropriation of the same quantity of surface by a duplicate as well as by a straight location.

Breece Min. Co., In re, 3 L. D. 11, p. 12.

The law as to the width of a claim on each side of the middle of a vein is mandatory, and a compliance with the law necessitates the fixing of a point through which these measurements shall begin.

Middle Point of Vein, In re, *Copp's Min. Lands* 231.

When a vein or lode outcrops at the surface, there is no question as to the point from which the lateral measurement of 300 feet must begin; but when the discovery shaft develops a vein or lode at some distance below the surface, and the locator does not

determine by further prospecting that the nearest actual surface point is elsewhere, and the fact does not otherwise appear, the point of the vein so discovered must be assumed to be the middle of the vein or lode, and the lateral measurements are to be calculated from that point.

Hope Min. Co., In re, 5 C. L. O. 116.

See Johnson, In re, 7 C. L. O. 35, p. 36.

Mason, In re, 8 C. L. O. 104.

The length of a vein or lode measured between the parallel end lines should not exceed the limits of the location.

Mason, In re, 8 C. L. O. 104.

The surface ground of a mining claim can not extend beyond the end of the lode in any instance.

Morse, In re, 5 C. L. O. 178.

Where a lode or vein abuts upon nonmineral land, a location made on such lode or vein can not include any ground beyond such abutment, and can not embrace land lying entirely beyond a nonmineral tract.

Mabel Lode, In re, 26 L. D. 675, p. 676.

A location is valid only to the extent of the lode included therein, and such location is held invalid in so far as it goes beyond the lode for the reason that the location gives no right to the surface except in connection with the lode.

Terrible Min. Co. v. Argentine Min. Co., 89 Fed. 583.

C. PARALLELOGRAM IN FORM.

This section contemplates that a mining claim shall be in the form of a parallelogram, having its sides equidistant and not more than 300 feet from the center of the vein on the surface, and not exceeding 1,500 feet in length, with the end lines parallel to each other.

Meydenbauer v. Stevens, 78 Fed. 787, p. 789.

Helvetia Lode, In re, Copp's Min. Lands 276.

These regulations have been construed as showing an intent that mining locations shall be in the shape of a parallelogram, the end lines crossing the strike of the vein at nearly right angles to it and the side lines substantially parallel to the strike.

Empire, etc., Min. Co. v. Tombstone, etc., Min. Co., 100 Fed. 910, p. 913.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.

The location of a mining claim is made by taking up a quantity of land in the form of a parallelogram, 1,500 feet in length and 300 feet on each side of the middle of the vein at the surface.

Book v. Justice Min. Co., 58 Fed. 106, p. 111.

A surface parallelogram not less than 50 feet in width must be located according to the provisions of this section.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 457.

These statutes were enacted upon the theory that veins and lodes of mineral-bearing rock in their general course could be readily ascertained, and by locating a claim in the form of a parallelogram 1,500 feet in length and 600 feet in width there would be no difficulty in including the lode within the surface ground so located.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 290.

Since the act of May 10, 1872 (17 Stat. 91), a mining location must be in the form of a parallelogram and the location so marked on the ground that its boundaries can be readily traced.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 458.

The principles of law and the construction of the statutes, as applied to locations made in the form of a parallelogram, can not be extended where a location is made in the form of an octagon or a curved figure in the shape of a horseshoe.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.
Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 291.

A lode claim is not required to be in the form of a parallelogram, but if a fissure vein deviates literally at an angle it is reasonable, as the primary purpose of the statute is to grant the mineral that the location should deviate with it, and if the mineral is deposited in an irregular shaped mass it can in no wise affect the interests of either the United States or adjoining locators as to the particular form of the location in order to cover the mass.

Breece Min. Co., In re, 3 L. D. 11, p. 12.
Wolfley v. Lebanon Min. Co., 4 Colo. 112.

A lode location is not required to be in the form of a parallelogram where the mineral is not deposited in a fissure but in irregularly shaped masses, and in such case the location may be in such form as will include such irregular shaped mass.

Breece Min. Co., In re, 11 C. L. O. 132.

The requirement that a lode claim shall not exceed 1,500 feet in length by 600 feet in width does not necessarily require the diagram to be in the form of a parallelogram; and the introduction of the provisions requiring a measurement of length along the vein, and of width from the middle of the vein, plainly points to a reason for the selection of the central line of location instead of the side line, and that reason must have been the possible tortuous course of the vein, as there could be no practical purpose in selecting the middle of the vein as the place of measurement, except to provide for an appropriation of the same quantity of surface by a deflecting as by a straight location.

Breece Min. Co., In re, 11 C. L. O. 132.
 See *Wolfley v. Lebanon Min. Co.*, 4 Colo. 112.

d. LENGTH AND WIDTH OF LOCATION.

By a location under this section the locator may claim 1,500 feet in length along the linear course of the lode with 150 feet on each side of it, making the location 300 feet in width, and 1,500 feet in length.

Stevens v. Williams, 23 Fed. Cas. 44, p. 46.
Armstrong v. Lower, 6 Colo. 393, p. 399.
 See *Patterson v. Hitchcock*, 3 Colo. 533.
Wolfley v. Lebanon Min. Co., 4 Colo. 112.

This section authorizes citizens of the United States, and those who have declared their intention to become such, who discover a vein or lode upon the public land carrying any valuable mineral deposits, to locate and claim the same not exceeding 1,500 feet along its length and not exceeding 300 feet along its width at the middle at the surface and make the end lines of the claim parallel.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 583.

By this section a mining claim can not extend more than 1,500 feet in length along the vein or lode.

Gwillim v. Donnellan, 115 U. S. 45, p. 47.

This is a specific limitation upon the maximum length and width of a lode claim and the specific direction that the end lines shall be parallel.

Price v. McIntosh, 1 Alaska 286, p. 290.

This section provides that all mining claims of quartz lodes located prior to its passage should be governed as to the length of the claim along the lode by the customs,

regulations, and laws in force at the date of their location, and that subsequent claims so located should not exceed 1,500 feet in length along the vein or lode.

Lakin v. Dolly, 53 Fed. 333, p. 337.
Book v. Justice Min. Co., 58 Fed. 106, p. 120.
Lellie Lode Min. Claim, In re, 31 L. D. 21, p. 23.
McShane v. Kenkle, 18 Mont. 208, p. 212.

This section permits a claim to be located to the extent of 1,500 feet along the vein or lode, but a location can not rest upon the conjectural or imaginary existence of a vein or lode.

Overgaard v. Westerberg, 3 Alaska 168, p. 172.

In the absence of any local mining rule or custom in force at the time of a location, a mining location may, under this statute, extend to the distance of 300 feet on each side of the middle of the vein at the surface and 1,500 feet in length along such vein.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 527.

The law as to the extent on each side of the middle of the vein or lode is mandatory and contemplates that but 300 feet of surface ground shall be taken on either side of the vein, and a compliance with the law necessitates the fixing of the point from which the measurement shall begin.

Hope Min. Co., In re, 5 C. L. O. 116.
See Johnson, In re, 7 C. L. O. 35, p. 36.

Under this section no lode mining claim can extend more than 300 feet on each side of the middle of the vein at the surface, and a locator must assume that some place on the earth's surface represented the middle of the vein, and from such point he can not exceed the statutory limit.

Empire, etc., Min. Co. v. Tombstone, etc., Min. Co., 131 Fed. 339, p. 341.

Since the enactment of this section the Land Department has no power to issue a patent to a quartz lode to any surface ground exceeding 300 feet in width on each side of the middle of the vein or lode, and a patent so issued is void as to the excess over 300 feet, and is subject to collateral attack.

Lakin v. Dolly, 53 Fed. 333, p. 337.
Richmond Min. Co. v. Rose, 114 U. S. 576.
Parley's Park, etc., Min. Co. v. Kerr, 130 U. S. 256, p. 262.
Northern Pacific R. Co. v. Cannon, 54 Fed. 252, p. 258.
Lakin v. Roberts, 54 Fed. 461, p. 463.
Doe v. Waterloo Min. Co. 54 Fed. 935, p. 941.
Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 821.
See Smelting Co. v. Kemp, 104 U. S. 636.
Carson City Gold, etc., Co. v. North Star Min. Co., 83 Fed. 658, p. 668.
Howeth v. Sullenger, 113 Cal. 547.
McElligott v. Krogh, 151 Cal. 126, p. 133.

This section regulates the size of mining claims and limits the width of a location to 300 feet on each side of the middle of the vein at the surface, but permits it to be reduced by local mining regulations to any width not less than 25 feet on each side of the middle of the vein at the surface.

Lakin v. Dolly, 53 Fed. 333, p. 337.
Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 409.

Under this section a lode claim may extend 1,500 feet along a vein or lode and may incidentally include surface ground to the extent of 300 feet on each side of the middle of the vein at the surface, irrespective of the character of such surface ground.

Ferrell v. Hoge, 29 L. D. 12, p. 13.

A single qualified locator may take up 1,500 feet of a vein with the surface ground extending 300 feet on each side thereof, and an association of a dozen or a hundred locators can take no more.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 326.

Prior to the act of May 10, 1872, (17 Stat. 91), of which this section is a part, there was no law giving a width to a quartz mining claim of not exceeding 300 feet on each side of the center, and there was no law of the United States prescribing the method by which a gold mine could be prosecuted and worked.

Dower v. Richards, 73 Cal. 477, p. 479.

A lode location can not be extended in a zigzag form whereby the distance between the side lines of the claim is made to exceed the maximum width of 600 feet permitted in the location of vein or lode claim.

Jack Pot Lode Min. Claim, In re, 34 L. D. 470, p. 471.

Belligerent & Other Lode Min. Claims, In re, 35 L.D. 22, p. 23.

Distinguishing Homestake Min. Co., In re, 29 L. D. 689.

13. DISCOVERY ESSENTIAL.

a. OBJECT AND NATURE OF REQUIREMENT.

See sec. 2319, p. 23.

The purpose of the law is to reward the discoverer and to prevent the location of land not found to be mineral.

Waskey v. Hammer, 223 U. S. 85.

The object of the law in requiring a discovery to precede a location was to insure good faith on the part of the mineral locator and to prevent fraud upon the Government.

Hall v. McKinnon, 193 Fed. 572, p. 576.

See *Lange v. Robinson*, 148 Fed. 799.

The purpose of this section requiring a discovery was to prevent frauds upon the Government by persons attempting to acquire patents to land not mineral in its character.

Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 808.

Lange v. Robinson, 148 Fed. 799, p. 803.

Overgaard v. Westerberg, 3 Alaska 168, p. 175.

Ambergris Min. Co. v. Day, 12 Idaho 108, p. 118.

Ferris v. McNally, 45 Mont. 20, pp. 22, 25.

Fox v. Myers, 29 Nev. 169, p. 184.

See *Upton v. Larkin*, 7 Mont. 449.

Sanders v. Noble, 22 Mont. 110, p. 117.

The essential requirements of this section must be construed as mandatory and can not be waived by the department.

Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 321.

b. DISCOVERY AS INITIAL ACT.

Discovery is the initial act upon which all mining rights are based, including the right of appropriation and possession, and this is the source of title to mining claims.

Creede & Cripple Creek Min., etc. Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 349.

Union Oil Co., In re, 23 L. D. 222, p. 223.

See *Waterloo Min. Co. v. Doe*, 56 Fed. 685.

All rights inuring to the benefit of the locator are based upon the initial act of location and the first requirement of the law is discovery.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 349.

Rupp v. Healey, 38 L. D. 387, p. 393.

Whiting v. Straup, 17 Wyo. 1, p. 19.

No rights can be acquired under the statute by a location made before discovery of a vein or lode within the limits of the claim located.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 530.

See *Shreve v. Copper Bell Min. Co.*, 11 Mont. 309, p. 335.

Fitzgerald v. Clark, 17 Mont. 100, p. 136.

A location void at the time it is made for want of discovery, or because a discovery was made on the prior patented claim, continues and remains void; and is not cured or made effectual by subsequent discovery, as, under the statute, discovery must precede location.

Upton v. Larkin, 5 Mont. 600, p. 604.

C. DISCOVERY A PREREQUISITE.

A discovery of a vein or lode on unoccupied or unappropriated lands of the United States is a prerequisite to the valid location of a mining claim.

Lockhart v. Farrell, 31 Utah 155, p. 159.

Discovery of a valuable mineral deposit and the possession thereof are requisites of a valid location.

Donnelly v. United States, 228 U. S. 243, p. 266.

See *Erhardt v. Boaro*, 113 U. S. 527, p. 535.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.

Chrisman v. Miller, 197 U. S. 313, p. 321.

Veins or lodes discovered on the surface or exposed by shafts from the surface must be found before any right to them vests.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co. 66 Fed. 200, p. 204.

A possessory title to a mining claim can only be acquired by a valid location, an essential of which is the discovery of mineral thereon.

Hall v. McKinnon, 193 Fed. 572, p. 577.

This section contemplates that a vein or lode must be discovered before a valid location can be made, and prescribes the size of the location and the fact that the boundaries of the claim must be marked upon the ground, and this could not be done without a previous discovery of a vein or lode in order to make the required measurements.

Ambergris Min. Co. v. Day, 12 Idaho 108, p. 123.

The validity of a location of a mining claim depends upon the discovery of mineral within the limits of the claim.

Union Min., etc., Co. v. Leitch, 24 Wash. 585, p. 588.

The discovery of mineral required by this section is as necessary to the location of a placer mining claim as to the location of a lode claim.

Hall v. McKinnon, 193 Fed. 572, p. 576.

See *Steele v. Tanana Mines R. Co.*, 148 Fed. 678.

The statutory requirement that discovery is essential to a valid location applies to lands containing petroleum and other oils.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 436.

A location of a lode mining claim in compliance with law, which has been so perfected as to vest a complete right of possession in the locator, can not be made without a discovery of mineral in such claim.

Uinta Tunnel Min., etc., Co. v. Ajax Gold Min. Co., 141 Fed. 563, p. 566.

The validity of location of a mining claim depends upon the discovery of minerals, but this is necessarily comprehended in the adjudication of an application for patent and the statutory proceedings attendant upon publication and proof, and any objection on the ground of want of discovery must be presented pending such period.

Empy, In re, 10 C. L. O. 102, p. 103.

The discovery must be upon land open to exploration and not claimed or located by any other person.

Winter Lode, In re, 22 L. D. 362, p. 364.

d. BASIS OF RIGHTS AND SOURCE OF TITLE.

Both by Congressional and State legislation and by the local rules and customs of miners, discovery and appropriation are recognized as the sources of title to mining claims.

- Erhardt v. Boaro, 113 U. S. 527, p. 535.
 Black v. Elkhorn Min. Co., 49 Fed. 549, p. 550.
 Honaker v. Martin, 11 Mont. 91, p. 96.
 Sharkey v. Candiani, 48 Oreg. 112, p. 124.
 See Jennison v. Kirk, 98 U. S. 453.
 Jackson v. Roby, 109 U. S. 440.
 O'Reilly v. Campbell, 116 U. S. 418.

A locator's rights flow from his discovery and his rights do not arise before or ante-date discovery, which is the primary source of title.

Yard, In re, 38 L. D. 59, p. 68.

Property rights in veins or lodes containing mineral-bearing areas are acquired in the first instance by discovery and location.

Aurora Lode v. Bulgar Hill, etc., Gulch Placer, 23 L. D. 95, p. 99.

The locator need not be the first discoverer of a vein or lode, but it must be known to him and claimed by him in order to give validity to his location.

- Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 676.
 McMillen v. Ferrum Min. Co. 32 Colo. 38, p. 43.
 See Wenner v. McNulty, 7 Mont. 30.
 O'Donnell v. Glenn, 8 Mont. 248.
 Hayes v. Lavagnino, 17 Utah 185.

e. DISCOVERY A UNIT.

A discovery is a whole and may not be divided and parceled out among the discoverers.

Poplar Creek Consol. Quartz Mine, In re, 16 L. D. 1, p. 2.

The discovery of mineral must be as an entirety and as the proper basis for the single location, and must be actual rather than theoretical.

- Debney v. Iles, 3 Alaska 438, p. 450.
 Reynolds v. Pascoe, 24 Utah 219.

A single discovery can not be construed into two discoveries in order to support two locations by running an imaginary line through the discovery point.

- Poplar Creek Consol. Quartz Mine, In re, 16 L. D. 1, p. 3.
 See Debney v. Iles, 3 Alaska 438, p. 451.

Two separate mining claims can not be located with a common end line passing through the center of the discovery shaft as the basis for discovery in both locations, as a discovery of mineral must be treated as an entirety and the proper basis of but one location and not susceptible of division.

- Poplar Creek Consol. Quartz Mine, In re, 16 L. D. 1.
 See Larkin v. Upton, 144 U. S. 19.
 Healy v. Rupp, 28 Colo. 102.
 McKinstry v. Clark, 4 Mont. 370, p. 393.
 Upton v. Larkin, 7 Mont. 449.
 Reynolds v. Pascoe, 24 Utah 219.
 Phillips v. Brill, 17 Wyo. 26, p. 40.

Whatever the area of a placer claim may be, but one discovery of mineral within the limits of the claim is required to precede its location; and if the claim be of 20 acres, located by one or more persons, or if it be of 160 acres by eight or more persons, it is but one location and but one discovery is required by the statute.

- Union Oil Co., In re (on review), 25 L. D. 351, p. 359.
 Overruling Union Oil Co., In re, 23 L. D. 222.
 Overruling Ferrell v. Hoge, 18 L. D. 81.

A discoverer of any part of an apex gets the right to its entire width even where a portion of such width may be outside of the surface side lines of his claim extended downward vertically; though he has no right to the extralateral surface, he has a right to the extralateral lode beneath the surface.

- Lawson v. United States Min. Co., 207 U. S. 1, p. 15.
 Saint Louis Min., etc., Co. v. Montana Min. Co., 104 Fed. 664.
 Empire State, etc., Min., etc., Co. v. Bunker Hill Min., etc., Co., 114 Fed. 417.
 Empire State, etc., Min., etc., Co. v. Bunker Hill Min., etc., Co., 131 Fed. 591.
 Last Chance Min. Co. v. Bunker Hill, etc., Min. Co., 131 Fed. 579.
 See United States Min. Co. v. Lawson, 134 Fed. 769.
 Keely v. Ophir Hill Consol. Min. Co., 169 Fed. 601, p. 604.

f. WHAT CONSTITUTES—ROCK IN PLACE.

When a locator finds rock in place containing mineral he has made a discovery within the meaning of this section, whether the rock or earth is rich or poor and whether it assays high or low.

- Book v. Justice Min. Co., 58 Fed. 106, p. 120.
 Montana Central R. Co. v. Migeon, 68 Fed. 811, p. 814.
 Migeon v. Montana Central R. Co., 77 Fed. 249, p. 255.
 Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 807.
 Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 676.
 Lange v. Robinson, 148 Fed. 799, p. 801.
 Debney v. Iles, 3 Alaska 438, p. 450.
 McShane v. Kenkle, 18 Mont. 208, p. 212.
 Fox v. Myers, 29 Nev. 169, p. 184.
 See Henderson v. Fulton, 35 L. D. 652, p. 658.
 Rough Rider and Other Claims, In re, 41 L. D. 242, p. 252.
 Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 322.

It is the finding of the mineral rock in place as distinguished from float rock that constitutes a discovery and warrants the prospector in locating a mining claim.

- Book v. Justice Min. Co., 58 Fed. 106, p. 120.
 Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 807.
 Bonner v. Meikle, 82 Fed. 697, p. 703.
 Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 676.
 Lange v. Robinson, 148 Fed. 799, p. 801.
 McShane v. Kenkle, 18 Mont. 208.
 Murray v. White, 42 Mont. 423, p. 433.
 See Migeon v. Montana Central R. Co., 77 Fed. 249.
 Henderson v. Fulton, 35 L. D. 652, p. 658.
 Shreve v. Copper Bell Min. Co., 11 Mont. 309.
 Noyes v. Clifford, 37 Mont. 138.
 Rough Rider & Other Claims, In re, 41 L. D. 242, p. 255.

To constitute a valid location there should be a discovery of gold or silver bearing mineral in rock in place, showing a well-defined crevice, a discovery at least 10 feet deep from the lowest rim rock thereof, and the discovery must be at the point claimed or designated or made the point of discovery by the locator of the claim, and so designated in his location certificate.

- Cheesman v. Shreeve, 40 Fed. 787, p. 788.
 Noyes v. Clifford, 37 Mont. 138, p. 150.
 See Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525.
 King v. Amy & Silversmith Min. Co., 9 Mont. 543.

A mineral discovery sufficient to justify the location of a mining claim is established where mineral is found and the evidence shows that a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine.

- Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 322.
 See Castle v. Womble, 19 L. D. 455.

The following elements are essential to constitute a valid discovery upon a lode claim:
 1. A vein or lode of quartz or other rock in place.

2. Quartz or other rock in place carrying gold or some other valuable mineral deposit.

3. A vein or lode of quartz or other rock in place carrying gold or other mineral deposit sufficient in quantity to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine.

Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 323.

It is the finding of mineral in rock in place as distinguished from float rock that constitutes discovery and warrants a location.

Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 322.

If the rock discovered is in place and carries enough precious metal in it to justify the locator in spending his time and money in prospecting and developing the ground located, then such a discovery is valid and the location may be made no matter what the locator's vocation may be, as the law does not discriminate in this respect and its justification to locate extends to any citizen who complies with its requirement.

McShane v. Kenkle, 18 Mont. 208, p. 211.

The discovery of a vein in rock in place such as a miner would be willing to follow in the expectation of finding ore of commercial value shows a location made in good faith.

Sanders v. Noble, 22 Mont. 110, p. 116.

See Armstrong v. Lower, 6 Colo. 393.

Michael v. Mills, 22 Colo. 439.

McShane v. Kenkle, 18 Mont. 208.

No valid location of a lode claim can be made until a vein of gold, silver, or metaliferous ore or rock in place has been discovered, and it follows by implication that if the deposit is not metalliferous ore the mineral should be located as a placer claim.

Montague v. Dobbs, 9 C. L. O. 165.

Overman Min. Co. v. Corcoran, 15 Nev. 147, p. 152.

The mining laws declare what shall constitute a discovery.

Cook v. Johnson, 3 Alaska 506, p. 531.

See Shreve v. Copper Bell, 11 Mont. 309, p. 343.

G. DISCOVERY WITHIN LIMITS OF LOCATION.

No mining claim can be located and no patent issued until the actual discovery of a vein or lode within the limits of the claim as located; this is a prerequisite to a valid title.

Gwillim v. Donnellan, 115 U. S. 45, p. 47.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431, p. 438.

King v. Amy & Silversmith Min. Co., 152 U. S. 222, p. 226.

Haws v. Victoria, etc., Min. Co., 160 U. S. 303, p. 314.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 448.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 112.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 70.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, pp. 343, 345, 353.

Chrisman v. Miller, 197 U. S. 313, p. 321.

Lawson v. United States, 207 U. S. 1, p. 13.

Waskey v. Hammer, 223 U. S. 85, p. 90.

Van Zandt v. Argentine Min. Co., 8 Fed. 725, p. 727.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 295.

Waterloo Min. Co. v. Doe, 56 Fed. 685, p. 689.

Book v. Justice Min. Co., 58 Fed. 106, p. 111.

Bonner v. Meikle, 82 Fed. 697, p. 698.

Perego v. Erwin, 85 Fed. 904, p. 905.

Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 807.

Walton v. Wild Goose Min., etc., Co. 123 Fed. 209, pp. 216, 218.

McCulloch v. Murphy, 125 Fed. 147, p. 151.

Overgaard v. Westerberg, 3 Alaska 168, p. 179.

Cascaden v. Bortolis, 3 Alaska 200, p. 204.

Bryan v. McCaig, 10 Colo. 309, p. 313.

Bay v. Oklahoma Southern, etc., Min. Co., 13 Okla. 425, p. 436.

See Dahl v. Raunheim, 132 U. S. 260, p. 269.

McMillen v. Ferrum Min. Co., 32 Colo. 38, p. 43.

The discovery must lie within the limits of the location, and if the title to the discovery fails so must the location which rests upon it.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

Waskey v. Hammer, 223 U. S. 85, p. 91.

Waskey v. Hammer, 170 Fed. 31, p. 35.

Behrends v. Goldsteen, 1 Alaska 518, p. 525.

Miller v. Girard, 3 Colo. App. 278.

Michael v. Mills, 22 Colo. 439, p. 443.

Miller v. Hamley, 31 Colo. 495, p. 498.

See Upton v. Larkin, 7 Mont. 449, p. 458.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 127.

This section forbids the location of mining claims until a discovery of a vein or lode within surface lines of the location.

Bay v. Oklahoma Southern, etc., Min. Co., 13 Okla. 425, p. 430.

This section measures the extent of the rights of a locator of a mining claim made on a surface discovery and makes a discovery of a lode or vein within the limits of the location a prerequisite to a valid location.

Hope Min. Co. v. Brown, 7 Mont. 550, p. 555.

See Montana Central R. Co. v. Migeon, 68 Fed. 811.

Burke v. McDonald, 2 Idaho 339 (310).

Harrington v. Chambers, 3 Utah 94;

Proof of the discovery of a vein or lode within the limits of a claim is necessary to protect the claim against relocation.

Little Pauline v. Leadville Lode; 7 L. D. 506, p. 508.

H. DISCOVERY OUTSIDE OF LOCATION—EFFECT.

A mining claim based upon a discovery made within the limits of another claim is void.

Belk v. Meagher, 104 U. S. 279.

Gwillim v. Donnellan, 115 U. S. 45.

Montana Co. v. Clark, 42 Fed. 626, p. 628.

Erwin v. Perego, 93 Fed. 608, p. 612.

Behrends v. Goldsteen, 1 Alaska 518, p. 525.

Wilhelm v. Silvester, 101 Cal. 358, p. 363.

Michael v. Mills, 22 Colo. 439.

Miller v. Hamley, 31 Colo. 495, p. 498.

Lockhart v. Farrell, 31 Utah 155, p. 159.

A discovery outside of the limits of the surface lines of a location, no matter what its proximity to such lines, is not sufficient to make a valid location.

Waskey v. Hammer, 222 U. S. 85, p. 91.

A location based on a discovery can not be made within the limits of an existing located claim that has not been abandoned or lost by failure to perform the labor required thereon by law, as the first locator has the exclusive right of possession and enjoyment of all the surface within the lines of his location and of all veins and lodes the top or apex of which lies within the surface lines.

Branagan v. Dulaney, 2 L. D. 744.

See Lavignino v. Uhlig, 198 U. S. 443.

A mining location can not be made until the discovery of a vein or lode within the limits of the claim, and a location can not be made which is based upon the discovery of a vein or lode within the limits of a prior existing valid location.

Golden Link Min., etc., Co., In re, 29 L. D. 384, p. 386.

See Branagan v. Dulaney, 2 L. D. 744.

Little Pittsburgh Consol. Min. Co. v. Amie Min. Co., 17 Fed. 57.

An application for patent for a mining claim can not be based on a discovery made in a discovery shaft which is located upon a patented claim.

Kennedy, *In re*, 10 C. L. O. 150.

Whether a discovery by a prospector within the boundaries of a prior location is valid or not must be determined by first ascertaining the status of the original location at the time such second location was made.

Branagan v. Dulaney, 2 L. D. 744, p. 748.

Where the part of a mining claim on which a discovery has been made conflicts with a prior lode location, and such conflicting ground is excluded, the locator can claim no right by virtue of the discovery on such excluded ground.

Cayuga Lode, *In re*, 5 L. D. 703, p. 704.

i. DISCOVERY SHAFT.

There is no provision for a discovery shaft in the Federal statutes.

McMillen v. Ferrum Min. Co., 32 Colo. 38, p. 43.

If discovery is made in a discovery shaft before any other party has acquired rights to the land included within the claim comprising such shaft the rights of the locator become fixed, and the discovery of mineral relates back to the original location.

Wight v. Tabor, 2 L. D. 738, p. 741.

The same rule applies to shafts as to veins or lodes, and a discovery must be found before any right to them vests.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 114.

It is essential to a valid location that a discovery of mineral in place be made in the discovery shaft, and this question must be determined before entry.

Wight v. Tabor, 2 L. D. 738, p. 743.

A discovery shaft must for executive purposes be taken as the center of the vein or lode.

Hope Min. Co., In re 5 C. L. O. 116.

Mason, In re, 8 C. L. O. 104.

A discovery and discovery shaft may be anywhere along the course of a vein or lode within the end lines of a location, may be nearer one end than the other, may be nearer one side line than the other, and is not required to be within any given distance from either of the side lines.

Taylor v. Parenteau, 23 Colo. 368, p. 374.

A discovery of a vein or lode by the sinking of a discovery shaft is a substantial compliance with the provisions of this section, and knowledge on the part of locators of the existence of mineral entitles them to make a location, although the original discovery was made by some one other than the locators.

Hayes v. Lavagnino, 17 Utah 185, p. 191.

See Jupiter Min. Co. v. Bodie Consol. Min. Co., 7 Sawy. 96.

Erhardt v. Boaro, 113 U. S. 527.

Where the locators of two association claims which overlap are sinking shafts at the same time, the first to discover mineral has priority of right, although the location was staked after the other, if it was made openly and peaceably.

Hall v. McKinnon, 193 Fed. 572, p. 577.

See Hanson v. Craig, 170 Fed. 62.

The discovery of mineral at any point within the boundaries of a claim not covered by a prior locator before other rights intervene will, with the previous act of location, constitute a valid and legal location, although the locator technically had no discovery shaft.

Branagan v. Dulaney, 2 L. D. 744.

j. ORDER OF STEPS IMMATERIAL—CONDITIONS.

This statute does not require a discovery before location, or that the location shall precede the discovery; it simply provides that both acts shall be completed before the right of possession vests; and the order in which the statutory requirements are complied with is immaterial so long as the rights of others do not intervene.

- Erwin v. Perego, 93 Fed. 608, p. 611.
 North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 531.
 Zollers v. Evans, 5 Fed. 172.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.
 Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 677.
 Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, pp. 217, 218.
 Uinta Tunnel Min., etc., Co. v. Ajax Gold Min. Co., 141 Fed. 563, p. 567.
 Thompson v. Burk, 2 Alaska 249, p. 255.
 Redden v. Harlan, 2 Alaska 402, p. 405.
 Debney v. Iles, 3 Alaska 438, p. 449.
 Cook v. Johnson, 3 Alaska 506, p. 528.
 Thompson v. Spray, 72 Cal. 528, p. 533.
 Miller v. Chrisman, 140 Cal. 440, p. 448.
 New England, etc., Oil Co. v. Congdon, 152 Cal. 211, p. 214.
 Strepy v. Stark, 7 Colo. 614, p. 619.
 Upton v. Larkin, 5 Mont. 600, p. 602.
 La Grande Invest. Co. v. Shaw, 44 Oreg. 416, p. 422.
 See Erhardt v. Boaro, 113 U. S. 527, p. 536.
 Biglow v. Conradt, 159 Fed. 868, p. 871.
 Bingham Amalgamated Copper Co. v. Ute Copper Co., 181 Fed. 748, p. 749.
 Reins v. Raunheim, 28 L. D. 526, p. 528.
 Crown Point Min. Co. v. Crismon, 39 Oreg. 364.

While the statute requires a discovery before a valid location can be made, yet, if a location is made and a discovery follows, the location is valid if made before the claim has been appropriated by another.

- Erwin v. Perego, 93 Fed. 608, p. 611.
 Zollers v. Evans, 5 Fed. 172, p. 175.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 680.
 Book v. Justice Min. Co., 58 Fed. 106, p. 108.
 Uinta Tunnel, etc., Co. v. Ajax Gold Min. Co., 141 Fed. 563, p. 567.
 Miller v. Chrisman, 140 Cal. 440, p. 448.
 Dwinell v. Dyer, 145 Cal. 12, p. 20.
 McGinnis v. Egbert, 8 Colo. 41.
 Upton v. Larkin, 7 Mont. 449, p. 457.
 Sharkey v. Candiani, 48 Oreg. 112, p. 124.
 See Weed v. Snook, 144 Cal. 439, p. 443.

The right to the exclusive possession of a mining claim depends upon a valid location, which, in turn, depends upon the existence of a discovery of mineral within the boundaries of the claim, but if all the acts prescribed by law are performed, including a discovery, prior to the initiation of rights in a third person, it can not be held that the order of these acts is essential to the creation of the rights given by a valid location.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 352.

Whiting v. Straup, 17 Wyo. 1, p. 19.

While no location of a mining claim can be made until discovery, yet subsequent discoveries may validate earlier locations and may inure to the benefit of the locator as against the United States and all parties whose rights were initiated subsequent to such discovery.

Uinta Tunnel Min., etc., Co. v. Creede & Cripple Creek Min., etc., Co., 119 Fed. 164, p. 169.

Healey v. Rupp, 37 Colo. 25, p. 28.

See Beals v. Cone, 27 Colo. 473.

The marking of boundaries and filing of location certificates may precede discovery, or discovery may precede them, but no location is valid until both are complete and the earlier act inures to the benefit of the locator as of the date of the later act, subject to all intervening rights.

Uinta Tunnel Min., etc., Co. v. Creede & Cripple Creek Min., etc., Co., 119 Fed. 164, pp. 169, 170.

Erhardt v. Boaro, 113 U. S. 527, p. 536.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 531.

Jupiter Min. Co. v. Bodie Consol., etc., Co., 11 Fed. 666, pp. 676, 678, 696.

Erwin v. Perego, 93 Fed. 608, p. 611.

Thompson v. Spray, 72 Cal. 528, p. 533.

Strepey v. Stark, 7 Colo. 614.

See Tuolumne Consol. Min. Co. v. Maier, 134 Cal. 583, p. 585.

Crown Point Min. Co. v. Crismon, 39 Oreg. 364, p. 367.

If a person should make a location in all other respects regular and in accordance with the laws, rules, regulations, and customs in force at the time, upon a supposed vein, before discovering the true vein or lode, and should do sufficient work to hold the claim and should thereafter discover the vein or lode within the limits of the claim located before any other person had acquired any rights therein, his claim would be good and the location valid.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 531.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 676.

Patchen v. Keeley, 19 Nev. 404.

See Doe v. Waterloo Min. Co., 70 Fed. 455.

Perego v. Erwin, 85 Fed. 904, p. 905.

Erwin v. Perego, 93 Fed. 608.

Russell v. Dufreane, 1 Alaska 486, p. 490.

Debney v. Iles, 3 Alaska 438, p. 449.

Cook v. Johnston, 3 Alaska 506, p. 528.

Brewster v. Shoemaker, 28 Colo. 176.

Wenner v. McNulty, 7 Mont. 30.

Golden Terra Min. Co. v. Smith (Mahler), 2 Dak. 377.

This section is interpreted to mean that the fact of discovery shall exist prior to the vesting of the right of exclusive possession which follows from a valid location, and not that the discovery shall be made before any of the other steps in the process of location are taken.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 351.

A second discovery made after the restaking of a claim is valid where no rights intervene and the location is incomplete at the date of the second discovery.

Erhardt v. Boaro, 113 U. S. 527.

Debney v. Iles, 3 Alaska 438, p. 449.

Golden Terra Min. Co. v. Smith (Mahler), 2 Dak. 377.

See Perego v. Erwin, 85 Fed. 904, p. 906.

k. PRIORITY OF DISCOVERY—EFFECT AND RIGHTS.

Priority of discovery is an essential fact in determining the right of possession to mining ground, as such discovery gives priority of right against naked location and possession.

Cook v. Klonos, 164 Fed. 529, p. 536.

See Belk v. Meagher, 104 U. S. 279.

Crossman v. Pendery, 8 Fed. 693.

Johanson v. White, 160 Fed. 901.

Horswell v. Ruiz, 67 Cal. 111.

Garthe v. Hart, 73 Cal. 541.

Gemmell v. Swain, 28 Mont. 331.

Where the locator of a mining claim permitted a third person to enter thereon and sink a shaft within the boundaries in which mineral in rock in place was discovered,

and a location made without protest before the first locator made a discovery and location, such second locator has the priority of right.

Crossman v. Pendery, 8 Fed. 693, p. 694.

See *Johanson v. White*, 160 Fed. 901, p. 903.

Where a discovery was made within the original limits of a mining claim six or seven months before an attempt was made to extend the lines of such claim over mining ground previously located and occupied by another, such discovery has relation only to the original boundaries of the claim and fixes the right of possession to such claim within such boundaries; but it has no relation to the claim with the extended boundaries and fixes no right of possession to such extended boundaries as against another who was in actual possession of the overlapping ground and who subsequently made the first discovery in such overlapping ground.

Biglow v. Conratt, 159 Fed. 868, p. 871.

See *Belk v. Meagher*, 104 U. S. 279, p. 284.

Discovery fixes the date of location with respect to all parties who have made the discoveries provided by law within the boundaries of overlapping claims.

Hall v. McKinnon, 193 Fed. 572, p. 577.

Where an original discovery of a vein upon which a mining location is based is included within the surface boundaries of a junior location which goes to patent without protest from the prior locator, but before patent a new discovery has been made on such prior location within the boundaries of the junior location as patented and within the surface boundaries of the prior location as originally located and development work is being prosecuted in good faith by such prior locator, his claim is valid and holds as to all ground not included in the patent of the junior locator, notwithstanding the loss of the original discovery.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 415.

Silver City Gold, etc., Min. Co. v. Lowry, 19 Utah 334.

See *Lowry v. Silver City Gold, etc., Min. Co.*, 179 U. S. 196.

Waskey v. Hammer, 170 Fed. 31, p. 35.

Debney v. Iles, 3 Alaska 438, p. 452.

1. SUFFICIENCY OF DISCOVERY.

There must be such a discovery of mineral as gives reasonable evidence of the presence of a vein or lode, or if a placer claim that it is valuable for such mining.

Chrisman v. Miller, 197 U. S. 313, p. 323.

See *Cascaden v. Bartolis*, 162 Fed. 267, p. 268.

This section does not intend that the locator of a mining claim shall determine the precise extent and character of the mineral or the continuity of the ore, and the existence of the rock in place bearing mineral before he can make a valid location.

Book v. Justice Min. Co., 58 Fed. 106, p. 120.

Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 807.

See *Cascaden v. Bartolis*, 162 Fed. 267, p. 271.

Holdt v. Hazard, 10 Cal. App. 440, p. 443.

Even slight indications of a defined and mineral bearing ledge have been held sufficient to support a location of a valid mining claim.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 813.

The finding of ore or metalliferous rock in place in a defined vein is sufficient to satisfy the statute, although it does not contain ore of paying quantities, if the rock in place is sufficiently encouraging to warrant an ordinarily prudent man in spending his time and money thereon.

Muldrick v. Brown, 37 Oreg. 185, p. 189.

See *Montana Central R. Co. v. Migeon*, 68 Fed. 811.

Burke v. McDonald, 2 Idaho 339 (310).

Harrington v. Chambers, 3 Utah 94.

Where gold or other mineral has been discovered on a mining claim and exists in sufficient quantities to justify men of ordinary prudence in the further expenditure of money and labor in their development, the land must be regarded as mineral in character.

Aspen Consol. Min. Co. v. Williams, 23 L. D. 34, p. 47.

This section does not impose any conditions upon the locator as to the value or extent of the ore discovered, but simply provides that no location of a mining claim shall be made until the discovery of a vein or lode.

Chrisman v. Miller, 197 U. S. 313, p. 321.

Book v. Justice Min. Co., 58 Fed. 106, p. 125.

Rough Rider and Other Claims, In re, 41 L. D. 242, p. 251.

See United States v. Iron Silver Min. Co., 128 U. S. 673.

United States v. Lavenson, 206 Fed. 755, p. 763.

Burke v. McDonald, 3 Idaho 296.

It is only necessary to discover a genuine mineral vein or lode, whether small or large, rich or poor, at the point of discovery within the lines of the location to entitle the miner to make a valid location of such vein or lode. After discovery and location it often requires much time and labor and great expense to develop a vein or lode sufficiently to determine whether it is really a valuable mine or not, and a location is necessary before incurring such expense.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 531.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 675.

Book v. Justice Min. Co., 58 Fed. 106, p. 125.

Meydenbauer v. Stevens, 78 Fed. 787, p. 790.

A discovery within a location of a continuous body of ore containing silver and lying between well-defined walls of rock is a discovery of mineral within this section.

Larson, In re, 9 C. L. O. 2, p. 3.

Discoveries of veins are frequently made on the surface without any expenditure of labor or money, while fortunes are often expended in exploration for veins of mineral-bearing rock, but Congress did not fix any amount to be expended either of money value or labor in the discovery of mineral.

Union Oil Co., In re, 23 L. D. 222, p. 224.

There is a broad and distinctive difference as applied to the mining laws as between the word "discovery" and the words "expenditures," "improvements," or "development," and the three latter are not synonymous with the first.

Union Oil Co., In re, 23 L. D. 222, p. 223.

See Smelting Co. v. Kemp, 104 U. S. 636.

Jackson v. Roby, 109 U. S. 440.

Chambers v. Harrington, 111 U. S. 350.

Good Return Min. Co., In re, 4 L. D. 221.

Questions as to the character of a vein or lode can only arise after the vein or lode on account of which patent is desired has been discovered.

East Tintic Consol. Min. Co., In re, 41 L. D. 255, p. 256 (rehearing).

A discovery is sufficient where surface formations of the particular location and others in the vicinity consist of limestone, conglomerate, or limestone and conglomerate, and containing within the limits of the locations intrusions of porphyry with iron-stained or iron-impregnated contacts, and iron "blow-outs," as well as stringers, feeders, ledges, and blow-outs of quartz, stained more or less with iron oxide or impregnated with iron sulphide, and varying in thickness from two to three inches to a number of feet, and where, according to the belief of mining men, the porphyritic intrusions and contacts have a direct connection with or relation to underlying and deep-seated copper deposits, and where such surface exposures are sufficient to warrant the expenditure of time and money with a reasonable prospect of the development of a paying mine, and where the location is within one of the richest copper mining dis-

tricts of the United States, and where such locations have previously been allowed by the department.

- Rough Rider and Other Lode Min. Claims, In re, 42 L. D. 584, p. 587.
 Vacating Rough Rider and Other Lode Min. Claims, In re, 41 L. D. 242; and
 Rough Rider and Other Lode Min. Claims, In re, 41 L. D. 255.
 See *Germania Iron Co. v. James*, 89 Fed. 811.
James v. Germania Iron Co., 107 Fed. 597.
Howe v. Parker, 190 Fed. 738.
Fuss, In re, 5 L. D. 167.
Thompson, In re, 8 L. D. 104.
Drew, In re, 8 L. D. 399.
French Lode, In re, 22 L. D. 675.
Gowdy v. Kismet Gold Min. Co., 24 L. D. 191.
Brick Pomeroy Mill Site, In re, 34 L. D. 320.
Hidden Treasure Consol. Quartz Mine, In re, 35 L. D. 485.
East Tintic Consol. Min. Co., In re, 41 L. D. 255.

III. EXTENT AND VALUE OF DISCOVERY.

The requirements of the statute have been met where minerals have been discovered and the evidence is sufficient to justify a person of ordinary prudence in making an expenditure of labor and money, with a reasonable prospect of success, in developing a valuable mine.

- Chrisman v. Miller*, 197 U. S. 313, p. 322.
Steele v. Tanana Mines R. Co., 148 Fed. 678, p. 680.
Lange v. Robinson, 148 Fed. 799, p. 803.
Cascaden v. Bortolis, 146 Fed. 739, p. 741.
Cascaden v. Bartolis, 162 Fed. 267, p. 268.
Castle v. Womble, 19 L. D. 455, p. 457.
Goldstein v. Juneau Townsite, 23 L. D. 417, p. 420.
Walker v. Southern Pacific R. Co., 24 L. D. 172, p. 175.
Leach v. Potter, 24 L. D. 573, p. 575.
Magruder v. Oregon & Calif. R. Co., 28 L. D. 174, p. 177.
Yard, In re, 38 L. D. 59, p. 69.
Charlton v. Kelly, 2 Alaska, 532, p. 541.
Rough Rider and Other Claims, In re, 41 L. D. 242, p. 251.

Any deposit of mineral matter, or indication of a vein or lode, found in a mineralized zone or belt within defined boundaries that a person is willing to spend his time and money to develop, in expectation of finding ore, may be the subject of a valid location, and when metallic vein matter appears at the surface a valid location of a ledge deep in the ground to which such vein matter leads may be made.

- Hayes v. Lavagnino*, 17 Utah 185, p. 196.
 See *Burke v. McDonald*, 3 Idaho 296.
Shreve v. Copper Bell Min. Co., 11 Mont. 309.
Harrington v. Chambers, 3 Utah 94.

In considering the nature or sufficiency of a discovery regard must be given to the size of the vein as disclosed, the quality and quantity of mineral it carries, its proximity to working mines, and location in an established mining district, the geological conditions, the fact that similar veins in the same locality have been successfully explored, and such other like facts as would be considered by a prudent man in determining whether the vein or lode would warrant further expenditure.

- Jefferson-Montana Copper Mines Co.*, In re, 41 L. D. 320, p. 323.

When it is said that a location may be sustained by the discovery of mineral deposits of such value as to at least justify the exploration of the lode in the expectation of finding ore sufficiently valuable to work, it is a very different question from telling a jury that the geological fact of the continuity of a vein to a certain point may be determined by what a practical miner might do in looking for some hoped-for continuity.

- Golden v. Murphy*, 31 Nev. 395, p. 429.
 See *United States v. Iron Silver Min. Co.*, 128 U. S. 673.
Shreve v. Copper Bell Min. Co., 11 Mont. 309, p. 343.
Fitzgerald v. Clark, 17 Mont. 100, p. 136.

The discovered vein or lode on which a location can be based must be one that from all indications has a present or prospective value.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 814.

Madison v. Octave Oil Co., 154 Cal. 768, p. 772.

The law does not contemplate that the locator shall show a paying mine at the time of the location.

Cook v. Johnson, 3 Alaska 506, p. 541.

Shreve v. Copper Bell Min. Co., 11 Mont. 309, p. 343.

A prospector or miner is not prohibited by the statute from making a valid location until he has fully demonstrated that the vein or lode of quartz or other rock in place bearing gold or silver which he has discovered will pay all the expenses in removing extracting, crushing, and reducing the ore, and leave a profit to himself.

Book v. Justice Min. Co., 58 Fed. 106, p. 124.

Fox v. Myers, 29 Nev. 169, p. 185.

The discovery in a tunnel of small seams of iron oxide, quartz, and small quantities of carbonate of lead of sufficient character as miners in the particular district would follow in the expectation of finding ore, and such as would justify miners in working the claim for that purpose, constitutes a sufficient discovery where the rock in such seams was different from the country rock and was designated by practical miners as rock in place bearing minerals.

Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 322.

See Shoshone Min. Co. v. Rutter, 87 Fed. 801.

The discovery of mineral on a hillside may, as against other placer locators of the same ground, be sufficient for a court to say that there had been a discovery of mineral in place, as courts do not weigh scales to determine the value of mineral found as between a prior and a subsequent locator of a mining claim on the same lode.

Ritter v. Lynch, 123 Fed. 930, p. 936.

Migeon v. Montana Central R. Co., 77 Fed. 249, p. 255.

See McShane v. Kenkle, 18 Mont. 208, p. 214.

Where a valid mineral location of many years standing is attacked on the ground that there was no actual discovery of a vein or lode such attack should be sustained by evidence so clear and persuasive as to satisfy the mind that the alleged discovery was in fact false.

Cheesman v. Shreeve, 40 Fed. 787, p. 791.

See Noyes v. Clifford, 37 Mont. 138, p. 150.

While a vein or lode discovered by a locator in the side of a hill or mountain and within well-defined walls will assay but a small amount per ton as compared with the cost of extracting, removing, and milling the ore, yet the miner may have good reason to believe from his experience and from that of others in the same mining district that the ore is liable to be richer at a greater depth than at the point of the discovery, still he has made such a discovery as will entitle him to make a valid location within the meaning of the statute.

Book v. Justice Min. Co., 58 Fed. 106, p. 124.

Holdt v. Hazard, 10 Cal. App. 440, p. 443.

A locator has made a discovery within the meaning of the statute permitting a location to be made of a mining claim upon discovery of a vein or lode within the limits thereof, when he has found mineral in place in sufficient quantity to justify him in the expenditure of time and labor thereon, and whether the rock assays high or low, but with this qualification that it was never intended that the courts should weigh the scales to determine the value of the mineral found as between a prior and a subsequent claimant of a mining claim on the same lode.

Migeon v. Montana, etc., R. Co., 77 Fed. 249.

Lange v. Robinson, 148 Fed. 799, p. 802.

Ambergis Min. Co. v. Day, 12 Idaho 108, p. 117.
 Fox v. Myers, 29 Nev. 169, p. 184.
 Golden v. Murphy, 31 Nev. 395, p. 429.
 See McShane v. Kenkle, 18 Mont. 208, p. 214.
 Overgaard v. Westerberg, 3 Alaska 168, p. 176.
 Cascaden v. Bortolis, 3 Alaska 200, p. 208.

The discovery of seams containing mineral-bearing earth and rock similar in character to seams or veins of mineral matter that had induced other miners to locate claims in the same district, and which by development were found to be a part of a well-defined lode or vein containing ore of great value, constitutes a discovery.

Jefferson-Montana Copper Mines Co., In re, 41 L. D. 320, p. 322.
 See Shoshone Min. Co. v. Rutter, 87 Fed. 801.

II. DISCOVERY INSUFFICIENT.

Mere indications of mineral, however strong, are not sufficient to answer to requirements of the statute on the subject of discovery either as to lode or placer claims.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 412.
 Chrisman v. Miller, 197 U. S. 313, p. 323.
 Waterloo Min. Co. v. Doe, 56 Fed. 685.
 Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 675.
 Olive Land, etc., Co. v. Olmstead, 103 Fed. 568, p. 572.
 Lange v. Robinson, 148 Fed. 799, p. 803.
 Charlton v. Kelly, 156 Fed. 433, p. 436.
 Cascaden v. Bartolis, 162 Fed. 267, p. 268.
 Cook v. Johnson, 3 Alaska 506, p. 536.
 Rough Rider and Other Claims, In re, 41 L. D. 242, p. 251.
 Mutchmor v. McCarthy, 149 Cal. 603, p. 612.
 Cleary v. Skiffich, 28 Colo. 362, p. 368.
 Noyes v. Clifford, 37 Mont. 138, p. 152.
 See Erhardt v. Boaro, 113 U. S. 527.
 King v. Amy & Silversmith, etc., Co., 152 U. S. 222, p. 227.
 Migeon v. Montana Central R. Co., 77 Fed. 249.
 Brownfield v. Bier, 15 Mont. 403.
 Rough Rider & Other Lode Min. Claims, In re, 42 L. D. 584; vacating 41 L. D. 242, 255.

A belief in the existence of mineral not based on any discovery or tracing does not amount to a discovery and does not meet the requirements of this statute.

Castle v. Womble, 19 L. D. 455, p. 456.
 Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.
 Sullivan v. Iron Silver Min. Co., 143 U. S. 431.
 Cascaden v. Bortolis, 3 Alaska 200, p. 209.
 Noyes v. Clifford, 37 Mont. 138, p. 152.
 See Migeon v. Montana Central R. Co., 77 Fed. 249.
 Brownfield v. Bier, 15 Mont. 403.
 Casey v. Thieviege, 19 Mont. 341.

There must be something beyond a mere guess on the part of a miner to authorize him to make a location which will exclude others from the ground, such as the discovery of minerals therein or in such proximity as to justify a reasonable belief in their existence and to protect the locator while making the necessary excavations.

Erhardt v. Boaro, 113 U. S. 527, p. 536.
 Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 807.
 Lange v. Robinson, 148 Fed. 799, p. 802.
 Overgaard v. Westerberg, 3 Alaska 168, p. 172.
 See Behrends v. Goldsteen, 1 Alaska 518, p. 525.
 Ambergis Min. Co. v. Day, 12 Idaho 108, p. 115.

A mining claim located "in the hope of finding some ore in it at some time" does not constitute a valid location where there has been no actual discovery of mineral.

Waterloo Min. Co. v. Doe, 56 Fed. 685, p. 689.

The necessary knowledge of the existence of mineral may be obtained from the outcrop of the lode or vein or from the development of the placer claim or in other ways, but mere hopes and beliefs can not be accepted as the equivalent of the knowledge required by the statute.

Castle v. Womble, 19 L. D. 455, p. 457.
Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

Slight surface indications of mineral do not constitute a discovery, but the law requires something more than conjecture, hope, or even indications, as mere indications, however strong, are not sufficient to answer the requirements of the statute.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 675.
Charlton v. Kelley, 156 Fed. 433, p. 435.
Miller v. Chrisman, 140 Cal. 440.
See United States v. Iron Silver Min. Co., 128 U. S. 673.
King v. Amy & Silversmith, etc., Min. Co., 152 U. S. 222.
Whiting v. Straup, 17 Wyo. 1, p. 19.

Not every crevice in the rocks, nor every outcropping on the surface, which suggests the possibility of mineral, or which may, on subsequent exploration, be found to develop ore of great value, can be adjudged a known vein or lode within the meaning of the statute.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 404.
Noyes v. Clifford, 37 Mont. 138, p. 152.
See Migeon v. Montana Central R. Co., 77 Fed. 249.
Erhardt v. Boaro, 113 U. S. 527.
Cook v. Johnson, 3 Alaska 506, p. 536.
Brownfield v. Bier, 15 Mont. 403.
Casey v. Thieviege, 19 Mont. 341.

This section provides that no location can be made until the discovery of a vein or lode, and no rights can be acquired under this statute by a location made before the discovery of a vein or lode within the limits of the claim, and the discovery of detached pieces of quartz or mere bunches of quartz not in place is not sufficient to answer the statutory requirement.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 675.
Gold in land does not characterize it as mineral unless it is in paying quantities.
Etling v. Potter, 17 L. D. 424, p. 426.
Johnson v. California Lustral Co., 127 Cal. 283, p. 286.
Cleary v. Skiffich, 28 Colo. 362, p. 368.
Cutting v. Reininghaus, 7 L. D. 265.
See United States v. Reed, 28 Fed. 482.

A discovery of country rock in which the "kidneys" of copper ore may be expected to be found is not a sufficient discovery within the meaning of the statute.

Rough Rider and Other Claims, In re, 41 L. D. 255.

O. DISCOVERY A QUESTION OF FACT.

Whether a vein or lode has been discovered or exists within the limits of a particular location is always a question of fact, and it is likewise a question of fact as to the continuity of ore and mineral matter constituting the width and extent of any lode.

Book v. Justice Min. Co., 58 Fed. 106, p. 126.
Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 807.
Ledoux v. Forester, 94 Fed. 600.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 14.
Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 414.
Lange v. Robinson, 148 Fed. 799, p. 803.
Hanson v. Craig, 170 Fed. 62, p. 64.
Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 814.
Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.
Cascaden v. Bartalis, 162 Fed. 267, p. 271.
Branagan v. Dulaney, 2 L. D. 744, p. 750.
Cayuga Lode, In re, 5 L. D. 703.

- Waterloo Min. Co. v. Doe, 17 L. D. 111, p. 114.
 Edling v. Potter, 17 L. D. 424, p. 426.
 Northern Pacific R. Co. v. Marshall, 17 L. D. 545, p. 546.
 Clark v. Ervin, 17 L. D. 550, p. 552.
 Castle v. Womble, 19 L. D. 455, p. 456.
 Tam v. Storey, 21 L. D. 440, p. 442.
 Winter Lode, In re, 22 L. D. 362, p. 364.
 Bunker Hill, etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 147.
 Tomera Placer Claim, In re, 33 L. D. 560.
 Yard, In re, 38 L. D. 59, p. 61.
 Rupp v. Healey, 38 L. D. 387, p. 392.
 Rough Rider and Other Claims, In re, 41 L. D. 242, p. 252.
 Campbell, In re, 4 C. L. O. 102.
 Wight v. Tabor, 2 L. D. 738, 10 C. L. O. 392, p. 393.
 Chambers, In re, 14 C. L. O. 162.
 Tuolumne Consol. Min. Co. v. Maier, 134 Cal. 583, p. 585.
 Cook v. Johnson, 3 Alaska 506, p. 531.
 Beals v. Cone, 27 Colo. 473, p. 484.
 McMillen v. Ferrum Min. Co., 32 Colo. 38, p. 43.
 Hauswirth v. Butcher, 4 Mont. 299, p. 307.
 Upton v. Larkin, 5 Mont. 600, p. 604.
 Upton v. Larkin, 7 Mont. 449, p. 457.
 Gemmell v. Swain, 28 Mont. 331, p. 335.
 Ferris v. McNally, 45 Mont. 20, pp. 22, 25.
 Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 457.
 Columbia Copper Min. Co. v. Dutchess Min., etc., Co., 13 Wyo. 244, p. 253.
 See Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394.
 Van Zandt v. Argentine Min. Co., 8 Fed. 725.
 Debney v. Iles, 3 Alaska 438, p. 452.
 Sanders v. Noble, 22 Mont. 110, p. 116.
 Noyes v. Clifford, 37 Mont. 138, p. 150.
 Whiting v. Straup, 17 Wyo. 1, p. 19.

In any case it may be an open question whether a location includes lands valuable for minerals, or whether it is based upon a barren seam or fissure.

- Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 814.
 Rough Rider and Other Claims, In re, 41 L. D. 242, p. 253.
 See Madison v. Octave Oil Co., 154 Cal. 768.

In a controversy as to the validity of a location it is not necessary that an assignee or purchaser from the original locator should prove the physical fact of a discovery of minerals, but this may be inferred from the certificate of locations, the manifestations of workings done, the long tenure of the claim, the development of a vein on the claim by subsequent working, and from all the surrounding circumstances.

- Cheesman v. Hart, 42 Fed. 98, p. 102.

When the controversy over the right of possession to mineral land is between two mineral claimants the rule as to the sufficiency of a discovery is more liberal than when the controversy is between a mineral claimant and an agricultural claimant.

- Chrisman v. Miller, 197 U. S. 313, p. 323.
 Steele v. Tanana Mines R. Co., 148 Fed. 678, p. 680.
 Lange v. Robinson, 148 Fed. 799, p. 803.
 Charlton v. Kelly, 2 Alaska 532, p. 541.
 Cook v. Johnson, 3 Alaska 506, p. 532.

The fact that land has been adjudicated to be mineral in character does not dispense with the necessity of making a discovery as a basis for location and mineral patent, and the question of whether a discovery had in fact been made is not barred by a prior adjudication that the land was mineral in character.

- Bunte, In re, 41 L. D. 520, p. 521.

While the question of discovery is not one ordinarily present before the Land Department, yet under certain circumstances this question may be fully investigated and determined by the department.

- Rupp v. Healey, 38 L. D. 387, p. 392.

Under this section in a contest of a location of a mining claim the proof must show a discovery and the court will not presume that a discovery was made from proof of a record of the location and the marking of it on the ground.

Smith v. Newell, 86 Fed. 56, p. 60.

P. KINDS OF MINERAL.

The statute is broad enough to embrace minerals of the metallic as well as the non-metallic class wherever found in rock in place.

Henderson v. Fulton, 35 L. D. 652, p. 663.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 241.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 408.

The clause in this section "other valuable deposits" includes nonmetalliferous as well as metalliferous deposits, and a deposit of asphaltum in lodes or veins in rock in place may be entered and patented under this section.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 408.

See Webb v. American Asphaltum Min. Co., 157 Fed. 203.

Q. KINDS OF MINERAL—INSTANCES.

See Sec. 2318, p. 8.

While asphaltum varies in its consistency from a liquid or semiliquid to a hard or solid condition, yet when the deposit assumes the form of gilsonite, which is neither a liquid nor a semiliquid, but a hard, solid mineral, and is found in a vein or lode in rock in place, it is then one of the valuable mineral deposits upon which a lode mining claim may be lawfully located under this section.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 206.

See San Francisco Chemical Co. v. Duffield, 201 Fed. 830.

A discovery of black iron and manganese outcroppings is sufficient to justify the location of a mining claim, as it is no more than a careful miner desiring to secure the fruits of his discovery would do.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Cinnabar is not found in any fissure of the earth's crust or in any lode as defined by geologists, yet this section speaks of lodes of quartz or rock in place bearing cinnabar.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

See Henderson v. Fulton, 35 L. D. 652, p. 666.

Calcium phosphate found in place varying in thickness from a few inches to 5 or 6 feet, found in place having a dip and strike firmly fixed in the mass of a mountain and occurring between strata of limestone, chert, and shale, where the line of demarcation between the veins of such phosphate rock and wall rock of limestone or shale is well defined and distinct, and where the distinction between such phosphate rock having a commercial value and the wall rock having no commercial value is readily determined by visual inspection, and where such phosphate rock is mined by blasting and otherwise, the same as other veins of valuable ore, it is subject to location under the mining laws only as a vein or lode and not as a placer claim.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 836.

Duffield v. San Francisco Chemical Co., 205 Fed. 480.

See Webb v. American Asphaltum Co., 157 Fed. 203.

Duffield v. San Francisco Chemical Co., 198 Fed. 942.

A discovery made in running a tunnel where there were small seams of iron oxide, quartz, and small quantities of carbonate of lead, and where the indications were of a character which the miners in that district would follow in the expectation of finding ore, and where the rock in such seams was different from the country rock, and where such seams were similar in character to the seams or veins of mineral matter that had induced other miners to locate claims in the same district, is a sufficient discovery to

justify a belief in the existence of a lode or vein of great value, and to show that the location was made in good faith and not upon a conjectural or imaginary existence of a vein or lode, which can not be permitted.

Shoshone Min. Co. v. Rutter, 87 Fed. 801.

See *King v. Amy & Silversmith Min. Co.*, 152 U. S. 222, p. 227.

Lange v. Robinson, 148 Fed. 799, p. 802.

Deposits of marble are not vein or lode deposits within the meaning of the mining laws, and are not subject to location and patent under the provisions applicable to vein or lode claims.

Henderson v. Fulton, 35 L. D. 652, p. 664.

See *Palmer*, In re, 38 L. D. 294, p. 296.

McDonald, In re, 40 L. D. 7, p. 9.

A valuable deposit of onyx occupying well-defined fissures with clearly marked hanging and footwalls of limestone, and a vein of such onyx of high commercial value having a well-defined strike and dip is subject to appropriation under the lode mining laws.

Utah Onyx Development Co., In re, 38 L. D. 504.

Individual veins of a series of veins of phosphate rock separated from each other by strata of limestone, chert, or shale, the separating strata varying in thickness from an inch to several feet, the series of veins taken as a whole lying between and clearly limited and defined in extent and position by solid massive walls of hard siliceous limestone, the separating strata within such series of veins limiting and defining the extent and position of the corresponding individual veins of the series, and constituting the walls of these individual veins, the strike and dip of the veins and walls conforming to each other throughout their entire extent within the location, are clearly veins in place between walls having a well-defined dip and strike, and are subject to location only as a lode claim.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 406.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 836.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 481.

Under this section a valid location of a quartz claim can not be made upon porphyry or limestone merely on the theory that the locator was willing to expend his time and money in prospecting for a vein or lode.

Ambergris Min. Co. v. Day, 12 Idaho 108, p. 124.

14. SURFACE LINES.

a. LOCATION AND DIRECTION OF SIDE LINES.

The lines of a location as made by the locator are the only lines that will be recognized, as the courts have no power to establish new lines or make a new location.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.

King v. Amy & Silversmith Min. Co., 152 U. S. 222.

Huster and New Year Lode, In re 29 L. D. 668, pp. 670, 671.

Fitzgerald v. Clark, 17 Mont. 100, p. 130.

See *Dagget v. Yreka Min., etc., Co.*, 149 Cal. 357, p. 373.

Where lines are drawn inaccurately and irregularly, a court can only give to the miner such rights as his improper location warrants under the statute; but it can not relocate his claim and make new side lines or end lines. Where the court finds that what are called side lines are in fact end lines it will, in determining the lateral rights, treat such side lines as end lines and such end lines as side lines, but it will not make

There is no inherent necessity for requiring the end lines of mining claims to be parallel, yet the statute so specifically prescribes; and the courts can not ignore this provision and hold that a locator failing to comply with the statute has all the rights that a strict compliance would give him.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, pp. 67, 70.

The only arbitrary or ironclad rule which governs in laying the end lines of a location is that they must be straight and parallel to each other, and when at right angles with the side lines they can not exceed 600 feet in length.

Belligerent and Other Lode Min. Claims, In re, 35 L. D. 22, p. 26.

See *Walrath v. Champion Min. Co.*, 171 U. S. 293, p. 311.

This section requires that the end lines of each claim shall be parallel to each other, and if not so placed, or if so placed as not to define the right of the locator to the exterior parts of the vein or lode, the defect can not be supplied.

Elgin Min., etc., Co. v. Iron Silver Min. Co., 14 Fed. 377, p. 379.

The object of the statute requiring the end lines to be parallel is sufficiently met if the location is made lengthwise of the vein or lode in a quadrangular shape, notwithstanding the end lines are not exactly parallel, and the locator has the right to make the end lines parallel where such change does not interfere with the rights of third persons.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 293.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 941.

Doe v. Sanger, 83 Cal. 203.

This section is based upon the ideal locations of parallelism that can scarcely exist in actual practice, and substantial compliance is sufficient, as the miner may be compelled by law to make the lines of his location upon the surface ground before the facts can be sufficiently ascertained in order to make the proper parallelism, and the statute is to be liberally construed in his favor so as to give him the full benefit in its spirit and intent, and in order to carry out the policy of the Government in opening up the mineral lands to exploration and development.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 548.

The end lines of a mining claim which are required to be parallel to each other are important features of a vein or lode claim.

Jack Pot Lode Min. Claim, In re, 34 L. D. 470.

See *Hidee Gold Min. Co.*, In re, 30 L. D. 420.

It is not intended by this statute that where the strike of a vein passes perpendicularly through the end lines the mere meanderings of the outcrop between such end lines caused by the surface influences of slides and débris on the mountain sides should absolutely control the question of parallelism, but the spirit and reason of the statute require that the settled and permanent course of the vein on its strike, as nature fixed it, should control where the zigzagging is restricted to slight variations from the general direction and trend of the strike.

Cheesman v. Hart, 42 Fed. 98, p. 99.

This section not only requires that the end lines of a lode claim shall be parallel but it contemplates that such end lines shall have a substantial existence in fact, and in length shall reasonably comport with the width of the claim as located, and in no case can it exceed in length the 600 feet which is the extreme width of a lode location, but an end line of such a claim which is less than 3 inches in length is not within the spirit or intent of the statute.

Jack Pot Lode Min. Claim, In re, 34 L. D. 470, p. 471.

See *Belligerent & Other Lode Min. Claims*, In re, 35 L. D. 22, p. 23.

The statute requires the end lines of a mining claim to be parallel and the location to be a four-sided figure, and there is no authority for the location or patenting of lode claims triangular in form.

Grand Dipper Lode, In re, 10 C. L. O. 240.

This section requires the end lines to be parallel, but a strict compliance with the law in this respect may be secured by an applicant filing an abandonment to so much of the premises as may be necessary to render the end lines parallel and filing an amended survey.

Philadelphia Lode Claimants v. Pride of the West Claimants, 3 C. L. O. 82.

d. WANT OF PARALLELISM OF END LINES—EFFECT.

If the end lines of a claim are laid obliquely to the course of the outcrop of a vein, then the locator can not follow the dip of such vein outside of his surface lines.

Colorado Central, etc., Min. Co. v. Turck, 50 Fed. 888, p. 896.

Iron Silver Min. Co. v. Elgin Min., etc., Co., 118 U. S. 196.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.

Montana Co. v. Clark, 42 Fed. 626.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 289.

Catron v. Old, 23 Colo. 433, p. 436.

See Mining Co. v. Tarbet, 98 U. S. 463.

Colorado Central, etc., Min. Co. v. Turck, 54 Fed. 262, p. 266.

Colorado Central, etc., Min. Co. v. Turck, 70 Fed. 294.

King v. Amy & Silversmith Consol. Min. Co., 9 Mont. 543, p. 567.

The want of parallelism of the end lines can not be made the basis of an objection because their convergence, when extended in the direction of the dip of the vein, would give a contestant of a mining claim less, instead of more, than the law provides.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 602.

Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147, p. 153.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 29.

The requirements of this section that the end lines must be parallel may not, under peculiar circumstances, be required.

Henry, In re, 10 C. L. O. 102.

Grand Dipper Lode, In re, 10 C. L. O. 240.

The act of July 26, 1866 (14 Stat. 251) did not require that the end lines be parallel, but they might converge or diverge; but the act required that they must be straight.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 312.

The act of May 10, 1872 (17 Stat. 91), requiring the end lines to be parallel does not apply to a location that was made under the act of July 26, 1866 (14 Stat. 251), and the patent for which was issued prior to the taking effect of the act of 1872.

Iron Silver Min. Co. v. Elgin, 118 U. S. 196, p. 208.

East Central Eureka Min. Co. v. Central Eureka Min. Co., 204 U. S. 266, p. 268.

See Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 291.

King v. Amy & Silversmith Consol. Min. Co., 9 Mont. 543, p. 567.

e. LINES LAID UPON SENIOR LOCATION—EFFECT.

A valid location of a mining claim may be made although some of the lines are across or upon a valid senior location, if no forcible entry is made.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, pp. 77-80.

Crown Point Min. Co. v. Buck, 97 Fed. 462, p. 465.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 400, p. 407.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 604.

Hallett & Hamburg Lodes, In re, 27 L. D. 104, p. 113.

Stranger Lode, In re, 28 L. D. 321, p. 324.

War Dance Lode, In re, 29 L. D. 256.

Hustler and New Year Lode, In re 29 L. D. 668, p. 670.

Davis v. Shepherd, 31 Colo. 141, p. 150.

See State v. District Court, 25 Mont. 504, pp. 509, 517 (distinguished).

Lines of a junior lode location may be laid within, upon, or across the surface of a valid senior location, though patented, for the purpose of defining or securing to such junior locator underground or extralateral rights not in conflict with any rights of the senior locator.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 542.

Hidee Gold Min. Co., In re, 30 L. D. 420.

Alice Lode Min. Claim, In re, 30 L. D. 481.

Paul Jones Lode, In re, 31 L. D. 359, p. 360.

Belligerent and Other Lode Min. Claims, In re, 35 L. D. 22, p. 26.

See Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, pp. 59, 85.

A locator may place his lines on a prior mining location with the consent of such prior locator, or when it is done openly without objection on his part, and thereby acquire the extralateral rights conferred by statute, and it seems that this may be done on patented ground where such lines are laid with the consent or openly and peaceably.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 419.

See Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 605.

Hidee Gold Min. Co., In re, 30 L. D. 420.

In the absence of objection on the part of a prior locator a subsequent locator has the legal right as against the Government and all subsequent locators to locate his lines upon or over such prior location.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 542.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 134 Fed. 268, p. 271.

A competent locator has the right to initiate a valid claim to unappropriated public land by a peaceable adverse entry thereon while it is in the possession of those who have no superior right to acquire the title or hold the possession.

Thallman v. Thomas, 111 Fed. 277, p. 279.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 834.

See Belk v. Meagher, 104 U. S. 279, p. 287.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 680.

Duffield v. San Francisco Chemical Co., 205 Fed. 480.

A locator of a mining claim may lay the boundaries thereof, if done openly and without any forcible, clandestine, surreptitious, or otherwise fraudulent entry, upon an existing mining claim of another, and without objection on the part of such other owner, and a location thus made carves out, as against the Government and all subsequent locators, a segment of the vein throughout its entire depths, which belongs to such locator.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 604.

See Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417.

Lode locations are often so placed as to leave between them irregular parcels of ground, and a discoverer of mineral on such irregular parcels may be unable to locate the same without making his end lines parallel unless he is permitted to place such end lines on territory already claimed by prior locators, and in such case he is permitted to make an overlapping location, if it can be done peaceably and without affecting the rights of the senior locator.

Stenfield v. Espe, 171 Fed. 825, p. 827.

See Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.

15. LOCATIONS ON EXISTING CLAIMS.

a. LOCATIONS INVALID.

A location made within the boundaries of an existing mining claim is void, because not made upon unappropriated lands of the public domain.

- Belk v. Meagher, 104 U. S. 279, p. 284.
 Gwillim v. Donnellan, 115 U. S. 45, p. 51.
 Book v. Justice Min. Co., 58 Fed. 108.
 Meydenbauer v. Stevens, 78 Fed. 787.
 Erwin v. Perego, 93 Fed. 608, p. 612.
 Crown Point Min. Co. v. Buck, 97 Fed. 462, p. 465.
 Last Chance Min. Co. v. Bunker Hill, etc., Min. Co., 131 Fed. 579, p. 585.
 Willitt v. Baker, 133 Fed. 937, p. 947.
 Bingham Amalgamated Copper Co. v. Ute Copper Co., 181 Fed. 748, p. 749.
 Rooney v. Barnette, 200 Fed. 700, p. 708.
 Montague v. Labay, 2 Alaska 575, p. 576.
 Jordan v. Duke, 4 Ariz. 278.
 Tuolumne Consol. Min. Co. v. Maier, 134 Cal. 583, p. 585.
 Sullivan v. Sharp, 33 Colo. 346, p. 348.
 Upton v. Santa Rita Min. Co., 14 N. Mex. 98, p. 128.
 See Lebanon Min. Co. v. Consol. Republican Min. Co., 6 Colo. 371.
 Moyle v. Bullene, 7 Colo. App. 308.
 Michael v. Mills, 22 Colo. 439.
 Kirk v. Meldrum, 28 Colo. 453.
 Reynolds v. Pascoe, 24 Utah 219.

A location can not be made on lands actually covered at the time by another valid and subsisting location, and this is true not only against a prior location but all the world, because the law does not permit it to be done.

- Correction Lode, In re, 15 L. D. 67, p. 69.
 Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 539.
 Flynn Group Min. Co. v. Murphy, 18 Idaho 266, p. 274.
 Batterton v. Douglas Min. Co., 20 Idaho 760, p. 765.
 Lockhart v. Leeds, 10 N. Mex. 568, p. 597.
 Jackson v. Prior Hill Min. Co., 19 S. Dak. 453, p. 457.
 Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 268.
 Peoria & Colo., etc., Co. v. Turner, 20 Colo. App. 474, p. 479.
 See United States v. Steenerson, 50 Fed. 504.
 Swanson v. Kettler, 17 Idaho 321.
 Murray v. Polglase, 23 Mont. 401.

A valid mineral location can not be made within the lines of a valid and subsisting mineral location.

Williams, In re, 20 L. D. 458.

A person who makes a mineral location on lands already segregated by a prior entry has no interest as against the original entryman.

- Leary v. Manuel, 12 L. D. 345, p. 346.
 See Hussey Lode, In re, 5 L. D. 93.
 Bright v. Elkhorn Min. Co., 8 L. D. 122.
 Dotson v. Arnold, 8 L. D. 439.

However regular in form a junior location may be, it is of no effect as against the rights conferred upon a prior locator so long as the prior location is subsisting.

Porter v. Tonopah North Star Tunnel, etc., Co., 133 Fed. 756, p. 758.

A party can not locate a valid claim to a lode already located and legally possessed by others.

- Zerres v. Vanina, 134 Fed. 610, p. 615.
 Rose v. Richmond Min. Co., 17 Nev. 25, p. 57.

The location of a mining claim may be valid although the boundary lines thereof were laid in part within and upon patented claims, where this was done openly and without provoking an objection or opposition from the owner of such patented claims.

- Hidee Gold Min. Co., In re, 30 L. D., 420, p. 422.
 Alice Lode Min. Claim, In re, 30 L. D., 481, p. 482.

A location void at the time it is made because made on a claim valid and subsisting continues and remains void and is not cured or made effectual by subsequent discovery.

Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 99.

A location of a mining claim can not be made by a discovery shaft upon another claim which has been previously located and which is a valid location.

Little Pittsburg Consol. Min. Co. v. Amie Min. Co., 17 Fed. 57, p. 59.

Behrends v. Goldsteen, 1 Alaska 518, p. 525.

See Armstrong v. Lower, 6 Colo. 393.

Moyle v. Bullene, 7 Colo. App. 308.

Upton v. Larkin, 5 Mont. 600.

Golden Terra Min. Co. v. Smith (Mahler), 2 Dak. 377; 4 Morr. Min. 390.

A mining location can not be made on lands lying below the line of ordinary high tide, and the department is without authority to grant any concession whatever as to lands so located.

Shively v. Bowlby, 152 U. S. 1, p. 58.

Heine v. Roth, 2 Alaska 416, p. 425.

B. OVERLAPPING CLAIMS—EFFECT AND VALIDITY.

While a locator may not have a location to the extent claimed by him, yet he may have a location as to so much of his original location as does not conflict with a prior location and to which other rights have not attached, if he discovers mineral on that part of his claim not within the boundaries of the prior location.

Branagan v. Dulaney, 2 L. D. 744, p. 749.

Where two locators are in possession of overlapping claims before discovery, it becomes a race of diligence between them to discover mineral, and the one first making such discovery obtains the prior right, but such discovery does not relate back, but any prior or pretended location is made valid by the discovery and takes effect as a valid mining location from that date, and gives him the full right in the claim to the exclusion of the other as to any overlapping ground occasioned by the mere prior surface marking.

Johanson v. White, 160 Fed. 901, p. 903.

See Belk v. Meagher, 104 U. S. 279.

Crossman v. Pendery, 8 Fed. 693.

Horswell v. Riuz, 67 Cal. 111.

Garthe v. Hart, 73 Cal. 541.

Gemmell v. Swain, 28 Mont. 331.

The fact that a mining location included an original discovery shaft of another claim would not destroy its validity where long prior to such location the owner of the senior location had located a new shaft and developed its mine in that shaft.

Lowry v. Silver City Gold, etc., Min. Co., 179 U. S. 196.

See Silver City Gold, etc., Min. Co. v. Lowry, 19 Utah 334.

A lode claim intersected by a prior placer location can not be allowed to include ground not contiguous to that containing the discovery.

Silver Queen Lode, In re, 16 L. D. 186.

Woods v. Holden, 26 L. D. 198, p. 200.

If a locator permits an adjoining claimant to obtain a patent for that portion of his territory which includes his discovery shaft, and he is without another which gives him a statutory right as against the contesting claimant, he has lost title to whatever territory is embraced within the limits of his claim.

Silver City Min. Co. v. Lowry, 19 Utah 334, p. 345.

See Gwillim v. Donnellan, 115 U. S. 45.

Girard v. Carson, 22 Colo. 345.

While a locator of a mining claim is in possession it is not competent for others upon a discovery made upon adjoining ground to project the location over the first occupied premises.

Weed v. Snook, 144 Cal. 439.

Phillips v. Brill, 17 Wyo. 26, p. 39.

C. LOCATIONS BY FORCE OR FRAUD INVALID.

A forcible, fraudulent, or clandestine entry for the purpose of laying or establishing the lines of a junior location upon a senior location will not confer any extralateral rights whatever.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 419.

Hoamer v. Wallace, 97 U. S. 575, p. 579.

Mower v. Fletcher, 116 U. S. 380.

McBrown v. Morris, 59 Cal. 64, p. 72.

Nickals v. Winn, 17 Nev. 188.

See Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 604.

A tortuous entry is unavailing for the purpose of initiating a valid location of a mining claim.

Belk v. Meagher, 104 U. S. 279, p. 285.

McNeil v. Pace, 3 L. D. 267, p. 269.

Kendall v. San Juan Gold Min. Co., 9 Colo. 349, p. 358.

See United States v. Carpenter, 111 U. S. 347.

A valid location of a mining claim can not be located upon a senior claim by forcible or fraudulent entry thereon, though such senior locator has no right either to the possession or title.

Thallman v. Thomas, 111 Fed. 277, p. 279.

An entry on a valid location against the will of the locator for the purpose of prospecting by sinking shafts or otherwise is undoubtedly a trespass, and such a trespass can not be relied upon to sustain a claim of a right to veins and lodes.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 231.

Traphagen v. Kirk, 30 Mont. 562, p. 574.

An entry and attempted location of a mining claim where the ground attempted to be located is in the actual possession of a prior locator actively engaged in doing the annual assessment work thereon is a trespass and no rights are initiated or acquired thereby.

Fee v. Durham, 121 Fed. 468, p. 469.

Lebanon Min. Co. v. Consol. Republican Min. Co., 6 Colo. 371.

Weese v. Barker, 7 Colo. 178.

Lockhart v. Leeds, 10 N. Mex. 568, p. 597.

See Atherton v. Fowler, 96 U. S. 513.

Price v. McIntosh, 1 Alaska 286, p. 301.

Redden v. Harlan, 2 Alaska 402, p. 407.

Bulette v. Dodge, 2 Alaska 427, p. 431.

Biglow v. Conradt, 3 Alaska 134, p. 140.

A valid locator can not be deprived of his inchoate right by the tortuous acts of others, and intruders and trespassers can not initiate rights to defeat those of a prior locator.

Erhardt v. Boaro, 113 U. S. 527, p. 534.

Bergquist v. West Virginia-Wyoming Copper Min. Co., 18 Wyo. 234, p. 270.

See Nash v. McNamara, 30 Nev. 114, p. 142.

Lockhart v. Wills, 9 N. Mex. 344, p. 361.

Garvey v. Elder, 21 S. Dak. 77, p. 79.

A person who has made peaceable entry upon a placer mining claim not exceeding 20 acres in an effort to discover mineral thereon will be protected from intrusion and trespass for a reasonable length of time and so long as he continues his search for minerals.

- Redden v. Harlan, 2 Alaska 402, p. 405.
 See Crossman v. Pendery, 8 Fed. 693.
 Doe v. Waterloo Min. Co., 70 Fed. 455.
 Field v. Grey, 1 Ariz. 404.

d. LOCATION WHERE SENIOR LOCATION IS VOID.

A person may make an original location of a mining claim upon land marked and occupied under an attempted prior location where such prior location is void by reason of failure to comply with the law as to location notice or recording the same, as such land, if mineral, is unappropriated public land subject to location notwithstanding the prior proceedings.

- Zerres v. Vanina, 150 Fed. 564, p. 565.
 Cook v. Johnson, 3 Alaska 506, p. 527.
 See Lavagnino v. Uhlig, 198 U. S. 443.

A prospector has no right to enter upon the surface of a valid placer claim for the purpose of making a lode location; but if an attempted placer location is void because the mineral attempted to be located was in veins or lodes and not subject to placer location, then a prospector may, upon peaceable entry, make a valid location of the same mineral as a lode claim on the theory that the attempted placer location being void the ground was unappropriated mineral land within the meaning of the law and subject to lode location.

- San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 835.
 Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 486.
 See Belk v. Meagher, 104 U. S. 279.
 Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.
 Thallman v. Thomas, 111 Fed. 277.
 Duffield v. San Francisco Chemical Co., 198 Fed. 942 (overruled).

16. EXCESSIVE LOCATION—EFFECT AND VALIDITY.

A mining claim located in excess of the width allowed by law may be valid as to the legal width and void as to the excess.

- Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 675.
 Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 877.
 Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584.
 Nicholls v. Lewis & Clark Min. Co., 18 Idaho 224, p. 231.
 Flynn Group Min. Co. v. Murphy, 18 Idaho 266, p. 269.
 See Glacier Mountain, etc., Min. Co. v. Willis, 127 U. S. 471.
 Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657.
 Burke v. McDonald, 2 Idaho 679.
 Gohres v. Illinois, etc.; Min. Co., 40 Oreg. 516.
 Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah, 3 p. 73 (dissenting opinion).

The unintentional inclusion in a mining location of a trifle more than the statutory amount is an irregularity which does not vitiate the location, but only makes it necessary to exclude such excess.

- Waskey v. Hammer, 223 U. S. 85, p. 90.
 See McIntosh v. Price, 121 Fed. 716.
 Zimmerman v. Funchion, 161 Fed. 859.

The mere inclusion in a mining notice of more land than is permitted by the statute does not invalidate the location.

- Pratt v. United Alaska Min. Co., 1 Alaska 95.
 Price v. McIntosh, 1 Alaska 286, p. 291.

See *Richmond Min. Co. v. Rose*, 114 U. S. 576.
Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.
Rose v. Richmond Min. Co., 17 Nev. 25.

Generally claims located in excess of the statutory quantity are void.

Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 315.

Where the exterior boundaries of a mining location include such an unreasonably excessive area that its boundary lines can not be said to impart notice to a prospector of a mining location or discovery within the reasonable distance of a lawful claim as located under the statute, then such location is void on the ground that its boundaries have not been marked and established as required by law.

Nicholls v. Lewis & Clark Min. Co., 18 Idaho 224, p. 232.
 See *Flynn Group Min. Co. v. Murphy*, 18 Idaho 266, p. 275.

A mining claim located in excess of the dimensions permitted under the mining laws of the United States and the rules of miners adopted in the mining districts not in conflict therewith is not wholly void, but the excess may be rejected and the claim be held good for the remainder.

Richmond Min. Co. v. Rose, 114 U. S. 576, pp. 579, 580.
Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 218.
Montague v. Labay, 2 Alaska 575.
Souter v. Maguire, 78 Cal. 543.
Howeth v. Sullenger, 113 Cal. 547, p. 551.
McElligott v. Krogh, 151 Cal. 126, p. 132.
Harper v. Hill, 159 Cal. 250, p. 258.
Hoban v. Boyer, 37 Colo. 185.
Moorhead v. Erie Min., etc., Co., 43 Colo. 408.
Stemwinder Min. Co. v. Emma & Last Chance, etc., Min. Co. 2 Idaho 421, p. 427.
Burke v. McDonald, 2 Idaho 646, p. 649.
Nicholls v. Lewis & Clarke Min. Co., 18 Idaho 224, p. 231.
Flynn Group Min. Co. v. Murphy, 18 Idaho 266, p. 269.
Rose v. Richmond Min. Co. 17 Nev. 25.
Nash v. McNamara, 30 Nev. 114.
Hansen v. Fletcher, 10 Utah 266, p. 272.
Rose v. Richmond Min. Co., 17 Nev. 25, pp. 59, 60.
Lockhart v. Farrell, 31 Utah 155.
Wilson v. Freeman, 29 Mont. 470 (note).
 See *Mining Co. v. Tarbet*, 98 U. S. 463, p. 464.
Pratt v. United Alaska Min. Co. 1 Alaska 95.
Price v. McIntosh, 1 Alaska 286, p. 291.
Gohres v. Illinois, etc., Min. Co., 40 Oreg. 516.

A mining claim in excess of the maximum amount permitted by the statute is not void, and the defect may be remedied by abandoning the excess.

Cardoner v. Stanley Consol. Min., etc., Co., 193 Fed. 517.
Madera v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 726.
 See *Zimmerman v. Funchion*, 161 Fed. 859.
Waskey v. Hammer, 170 Fed. 31.
Jones v. Wild Goose Min., etc., Co., 177 Fed. 95.

17. POSSESSION OF CLAIM—HOW FAR ESSENTIAL.

See sec. 2322, p. 110.

A locator of a quartz mine prior to the time he is entitled to a patent has a valid possessory title which will be protected by law, but it is not real estate or an interest in land, and will pass by verbal sale if accompanied by actual transfer and possession.

Herron v. Eagle Min. Co., 37 Oreg. 155, p. 157.
 See *Table Mountain Tunnel Co. v. Stranahan*, 20 Cal. 198.
Patterson v. Keystone Min. Co., 30 Cal. 360.
Allen v. Dunlap, 24 Oreg. 229.
Duffy v. Mix, 24 Oreg. 265.

A mineral claimant not in actual possession of a claim before location has no superior rights to that of a third person entering peaceably.

New England & Coalings Oil Co. v. Congdon, 152 Cal. 211, p. 213.

Actual possession of a mining claim is not essential to the validity of a title obtained by a valid location, and until such location is terminated by abandonment or forfeiture no right or claim can be acquired by adverse entry.

Belk v. Meagher, 104 U. S. 279, pp. 283, 284.

McCulloch v. Murphy, 125 Fed. 147, p. 150.

McLemore v. Express Oil Co., 158 Cal. 559, p. 561.

Burke v. McDonald, 2 Idaho 310, p. 325.

Holdt v. Hazard, 10 Cal. App. 440, p. 444.

See Harris v. Kellogg, 117 Cal. 484, p. 488.

Peoria & Colorado Min., etc., Co. v. Turner, 20 Colo. App. 474, p. 479.

A location to be effective must be good at the time when made, and when perfected it has the effect of a grant by the United States of the right of present and exclusive possession.

Belk v. Meagher, 104 U. S. 279, p. 285.

Jones v. Wild Goose Min., etc., Co. 177 Fed. 95, p. 99.

Yosemite National Park, In re, 25 L. D. 48, p. 50.

Chilberg v. Consolidated Min. Co., 3 Alaska 235, p. 238.

Montana Min. Co. v. St. Louis Min., etc., Co., 20 Mont 394, p. 405.

Hickey v. Anaconda Copper Min. Co. 33 Mont. 46, p. 64.

Nash v. McNamara, 30 Nev. 114, p. 132.

Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 564.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 273.

See Noyes v. Mantle, 127 U. S. 348.

Manuel v. Wulff, 152 U. S. 505.

Largey, In re, 17 C. L. O. 3.

Pikes Peak Lode, In re, 14 L. D. 47.

Swanson v. Kettler, 17 Idaho 321, p. 331.

When a valid location of a mining claim is once made it vests in the locator and his grantees the right of possession thereto, and this right can not be divested by the obliteration or removal without the fault of the locator or his grantees of the stakes and monuments marking its boundaries or the obliteration or removal from the claim of the location notice posted thereon.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 392.

Tonopah & Salt Lake Min. Co., v. Tonopah Min. Co., 125 Fed. 400.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408.

The preliminary act of location is a basis for the vested possessory right, and this is recognized by law, and of which the claimant can not be dispossessed except upon the ground of abandonment.

Harrison, In re, 2 L. D. 767, p. 771.

The possession of a mining claim by a locator who has complied with the statutes is sufficient to prevent an intruder from acquiring any rights, even upon a peaceable entry.

Biglow v. Conradt, 159 Fed. 868, p. 870.

See Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 316.

McIntosh v. Price, 121 Fed. 716, p. 718.

Eilers v. Boatman, 3 Utah 159.

A locator who has in good faith made a discovery and marked the boundaries with regard to the position of the apex, as he then finds and believes it to be, is protected in the possession of the surface thus ascertained, and the monuments he then sets control the location of the claim, and only in this way can certainty of location and security of titles to mining claims be obtained.

Harper v. Hill, 159 Cal. 250, p. 255.

See Dwinnell v. Dyer, 145 Cal. 12, p. 20.

Golden Fleece Gold etc. Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 456.

Parties can not enter upon the public domain and acquire the right of possession to a mining claim by the mere performance of the acts prescribed for a location.

Cook v. Klonos, 164 Fed. 529, p. 536.

Creede & Cripple Creek Min. etc. Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 346.

See Johanson v. White, 160 Fed. 901.

Proof of work on a vein within a well-defined surface claim not exceeding 1,500 feet in length and 600 feet in width is sufficient to establish the right of possession without proof of any record of such claim.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 323.

By this and the following sections certain mining improvements, which are usually valuable property, are required to keep alive the possessory right and to entitle a mineral claimant to a patent, and these may be placed outside the claim and on private land, and there would seem to be no substantial reason, in the absence of direct prohibition, why the surface location lines, which, not property in themselves, may not be laid upon private property.

Hidee Gold Min. Co., In re, 30 L. D. 420, p. 427.

A miner may hold the place in which he is working against all others having no better right, but if he asserts title to a full claim of 1,500 feet in length and 300 feet in width he must prove a lode extending throughout the claim.

Zollers v. Evans, 5 Fed. 172, p. 173.

Under this section the locator of a mining claim is entitled to the possession of the ground actually occupied until he makes a discovery of mineral on which to base his location.

Field v. Grey, 1 Ariz. 404, p. 406.

Patterson v. Tarbell, 26 Oreg. 29, p. 37.

18. MINING LOCATION AS PROPERTY.

All mining claims perfected under the law are property in the highest sense of the term, and may be bought, sold, and conveyed, and will pass by descent, and are not, therefore, subject to the disposal of the Government.

Belk v. Meagher, 104 U. S. 279, p. 283.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 551.

South Star Lode, In re, 20 L. D. 204, p. 205.

Yosemite National Park, In re, 25 L. D. 48, p. 50.

Yard, In re, 38 L. D. 59, p. 64.

Worthen v. Sidway, 72 Ark. 215, p. 225.

Bishop v. Baisley, 28 Oreg. 119, p. 127.

The location of a lode mining claim gives to the locator a vested property right.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 342.

An interest in a valid mining location is an interest distinct from the land itself and is vendible, inheritable, and taxable.

Forbes v. Gracey, 94 U. S. 762.

Belk v. Meagher, 104 U. S. 279, p. 283.

Manuel v. Wulff, 152 U. S. 505.

St. Louis Min., etc., Co. v. Montana Min. Co., 171 U. S. 650, p. 655.

Elder v. Wood, 208 U. S. 226, p. 232.

United States v. Rizzinelli, 182 Fed. 675, p. 682.

Worthen v. Sidway, 72 Ark. 215, p. 225.

Alexander v. Sherman, 2 Ariz. 326, p. 329.

Suessenbach v. First National Bank, 5 Dak. 477, p. 497.

Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 564.

claim to follow the paying streak in any form he chooses not exceeding twenty acres, in the absence of local regulations.

Price v. McIntosh, 1 Alaska 286, p. 296.

Sand rock or sedimentary sandstone formation in the general mass of the mountain bearing gold and showing tests ranging from one to nine dollars is rock in place bearing mineral and constitutes a vein or lode within the mining statutes, and can be located and entered only under the law applicable to lode deposits and can not be entered as a placer claim.

Palmer, In re, 38 L. D. 294, p. 297.

See Duffield v. San Francisco Chemical Co., 205 Fed. 480.

21. STATE REGULATIONS—VALIDITY.

The location of a valid mining claim under the Federal statute must be made in conformity with any valid State legislation that may exist in the particular State in which the mineral land is situated, as well as with any valid existing local rules and regulations of mining districts.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 678.

Mares v. Dillon, 30 Mont. 117, p. 132.

Ferris v. McNally, 45 Mont. 20, p. 25.

See Erhardt v. Boaro, 113 U. S. 527, p. 533.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.

Parley's Park, etc., Min. Co. v. Kerr, 130 U. S. 256.

Kendall v. San Juan Min. Co., 144 U. S. 658, p. 664.

Enterprise Min. Co. v. Rico-Aspen Min. Co., 167 U. S. 108.

Butte City Water Co. v. Baker, 196 U. S. 119.

Creede & Cripple Creek Min. Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 346.

Erwin v. Perego, 93 Fed. 608.

Northmore v. Simmons, 97 Fed. 386.

White v. Lee, 78 Cal. 593.

Kern Oil Co. v. Crawford, 143 Cal. 298.

Saxton v. Perry, 47 Colo. 263, p. 273.

Sissons v. Sommers, 24 Nev. 379.

Copper Globe Min. Co. v. Allman, 23 Utah 410.

The requirements of this section are supplemented by a statute of Idaho which provides that stakes, posts, or monuments set to indicate the line of the vein or ledge must be taken for the purposes of the location, to mark correctly the line thereof, and providing that such line can not be changed so as to affect subsequent rights or locations.

Ambergris Min. Co. v. Day, 12 Idaho 108, p. 123.

Section 3101 of the Revised Statutes of Idaho, as amended by the act of February 14, 1899, and the act of March 13, 1899, as to the proof of the performance of labor and making improvements upon mining claims, relate to and deal with single mining claims as defined by this section of the statute.

Empire Copper Co. v. Henderson, 15 Idaho 635, p. 638.

22. RULES AND CUSTOMS OF MINERS.

Mining claims upon lodes and veins are governed by the customs, regulations, and laws in force at the date of their location.

Hooper, In re, 8 C. L. O. 120.

A location made in accordance with the local rules and customs of miners in force at the time is recognized and protected by the mineral laws of the United States subsequently enacted.

Glacier Mountain, etc., *Min. Co. v. Willis*, 127 U. S. 471, p. 482.

This section concedes to mining districts the power to diminish the surface width of mining claims from 300 feet on each side of the middle of the vein to 25 feet.

Northmore v. Simmons, 97 Fed. 386, p. 388.

See *Parley's Park Silver Min. Co. v. Kerr*, 130 U. S. 256, p. 261.

Miners may limit the width of a lode claim to 25 feet on each side of the middle of a vein or lode; but such a rule or custom must be established and must be in force at the time and place of the location, and such rule must be in accord with the United States statutes and with the statutes of the State.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 527.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 673.

Whether surface ground to the width of 300 feet on each side of the middle of the vein can be taken under this section depends upon local regulations or State laws.

Monarch of the North Claim, In re, Copp's Min. Lands 304, p. 305.

Mason, In re, 8 C. L. O. 104.

This section makes no provision for a discovery shaft and this may be required or permitted by local statute.

O'Donnell v. Glenn, 8 Mont. 248, p. 251.

23. LOCATION NOTICE—SUFFICIENCY AND EFFECT.

A location notice must conform to the requirements of this section.

Seidler v. Lafave, 4 N. Mex 369, p. 370.

Seidler v. Lafave, 5 N. Mex 44.

A notice of location posted upon mineral land before discovery of a vein or lode is an absolute nullity.

Bonner v. Meikle, 82 Fed. 697, p. 698.

Gemmell v. Swain, 28 Mont. 331, p. 336.

See *Upton v. Larkin*, 5 Mont. 600.

The location of a mining claim, which, when duly recorded, is constructive notice of the existence of a vein or lode, is one made under the law and meeting all the requirements of the law, and must be one made after the discovery, within its limits, of a valuable vein or lode.

Wilson Creek Consol. Min., etc., Co. v. Montgomery, 23 L. D. 476, p. 477.

24. TAXATION OF MINING CLAIMS.

If a State tax is in point of fact levied on the property right of the United States, it must be held void; but if it is levied on the property or the recognized possessory right of the locator, and can be collected without affecting or embarrassing the title of the United States and property which belongs to the Government, then there is no ground for interference with the processes of a State in its collection of the tax.

Forbes v. Gracey, 94 U. S. 762, p. 763.

When mineral ores become detached from the soil in which they are embedded they become personal property of the mine owners and are free from any lien, claim, or

title of the United States, though taken from the public lands, and may be subject to taxation by a State, and collection of the taxes may be enforced by sale the same as other species of property.

Forbes v. Gracey, 94 U. S. 762, p. 765.

A State has no power to make its lien for taxes levied on mineral ores a lien on a mining claim if it interferes in any manner with the right or title of the United States; but it may make such tax a lien on the possessory right of the miner, held and owned by him as a separate and distinct property right from that of the Government in the public land.

Forbes v. Gracey, 94 U. S. 762, p. 766.

A valid subsisting mining location or an interest therein is subject to taxation by a State, though the title to the land on which such mining claim is located is in the United States and a part of the public lands.

Elder v. Wood, 208 U. S. 226, p. 231.

See Arizona v. Copper Queen etc. Min. Co., 233 U. S. 87.

SECTION 2321, REVISED STATUTES.

Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Same as the latter part of section 7, act of May 10, 1872 (17 Stat. 91, p. 94), p. 680.

A. PROOF OF CITIZENSHIP.

B. ALIEN LOCATOR, p. 101.

A. PROOF OF CITIZENSHIP.

1. INDIVIDUAL LOCATOR.

a. METHOD OF PROVING.

b. TRUSTEE AS LOCATOR—CITIZENSHIP OF BENEFICIARY.

2. UNINCORPORATED ASSOCIATION AS LOCATOR.

3. CORPORATION AS LOCATOR.

1. INDIVIDUAL LOCATOR.

a. METHOD OF PROVING.

Proof of citizenship under this section may consist in the affidavit of the applicant.

O'Reilly v. Campbell, 116 U. S. 418, p. 420.

McKinley v. Wheeler, 130 U. S. 630, p. 634.

The affidavit of the locator as to citizenship raises a presumption of citizenship.

North Noonday Min. Co. v. Orient Min. Co., 11 Fed. 125, p. 126.

The citizenship of a locator of a mining claim may be established by his oath accompanying the recorded notice of a location, and this is taken as prima facie evidence of the fact and is sufficient until doubt is thrown upon the accuracy of his statement.

Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 299.

Beals v. Cone, 27 Colo. 473, p. 501.

Proof of citizenship is sufficient where it consists of an affidavit of the claimant corroborated by two witnesses in which it is stated that the claimant is a native-born citizen of the United States.

Mosley, In re, 6 L. D. 620, p. 621.

The provision of this section as to the proof of citizenship by the affidavit of the locator necessarily contemplates an affidavit to some extent based upon information and belief and the statute substitutes such affidavit for the record of naturalization.

North Noonday Min. Co. v. Orient Min. Co., 11 Fed. 125, p. 126.

This section explicitly sets forth the method to be pursued for the purpose of establishing the qualifications of citizenship and the department can not impose an additional condition at variance with the terms of the act.

Mooney, In re, 3 C. L. O. 68.

Where the locator's title to a mine is of recent origin and his citizenship is denied, the fact of his naturalization or of his declaration of intention to become a citizen must be proved by the record of some court of competent jurisdiction.

Wood v. Aspen Min., etc., Co., 36 Fed. 25, p. 26.

Citizenship may be proved like any other fact and is a question for the court and jury to pass upon.

Strickley v. Hill, 22 Utah 257, p. 269.

The Land Department must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title as well as the nature of the land and whether it is of the class which is open to sale.

Steel v. Smelting Co., 106 U. S. 447, p. 451.

The burden of proving citizenship is on the locator of a mining claim, where his citizenship is expressly denied.

Wood v. Aspen Min., etc., Co., 36 Fed. 25.

Objection to the question of want of citizenship can not be taken for the first time on appeal.

O'Reilly v. Campbell, 116 U. S. 418, p. 420.

The rule of evidence as to citizenship prescribed in this section of the Revised Statutes, which is section 7 of the act of May, 10 1872 (17 Stat. 91) has been changed since the decision of August 4, 1871, in this claim, and the defect mentioned in that decision has been cured.

New Idria Min. Co., In re, 6 C. L. O. 71, p. 72.

b. TRUSTEE AS LOCATOR—CITIZENSHIP OF BENEFICIARY.

Where an applicant for entry for a mining claim is a trustee, then proof of citizenship as to the beneficiaries is required.

Capricorn Placer, In re, 10 L. D. 641, p. 642.

2. UNINCORPORATED ASSOCIATION AS LOCATOR.

In case of an association or persons unincorporated, the proof of citizenship may consist of an affidavit of an authorized agent made either upon his own knowledge or upon information and belief.

O'Reilly v. Campbell, 116 U. S. 418, p. 420.

The provision of this section contemplates an affidavit on information and belief where the naturalization of a person other than the person making the affidavit is concerned, and the affidavit of an authorized agent on an unincorporated association may be upon information and belief.

North Noonday Min. Co. v. Orient Min. Co., 11 Fed. 125, p. 126.

This section requires proof of citizenship in every member of an association of persons unincorporated and accepts as proof of citizenship in case of a domestic corporation a certified copy of its certificate of incorporation.

Igo Bridge Extension Placer, In re, 38 L. D. 281, p. 282.

A mining claim located by an association of persons assigning to each a particular part of the vein is not void because one of such locators was an alien, but the law will be vindicated by declaring void the particular location of such alien, without regard to the effect of such a holding.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 326.

See Rose v. Richmond Min. Co., 17 Nev. 25, p. 60.

3. CORPORATION AS LOCATOR.

Corporations were intended to be admitted to all the benefits of the mining laws.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 102.

The proof of citizenship required by this section, where the locator is a corporation is properly made by filing with the application for patent a certificate of incorporation under the seal of the State in which the corporation was organized.

Rose No. 1, etc., Lode Claim, In re, 22 L. D. 83.

Clark's Pocket Quartz Mine, In re, 27 L. D. 351, p. 352.

Holman v. Central Montana Mines Co., 34 L. D. 568, p. 571.

See South Yuba, etc., Min. Co. v. Rosa, 80 Cal. 333.

A certified copy of the articles of incorporation of a mining company is sufficient to establish the citizenship of the stockholders as the law presumes that stockholders are all citizens of the State of incorporation.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 463.

Jackson v. White Cloud Gold Min., etc., Co., 36 Colo. 122, p. 124.

The language of this section as to proof of citizenship is in the alternative and the statutory requirement is satisfied by doing either one or the other, and the filing of the proper certificate of incorporation is sufficient to prove the corporate existence.

Silver King Min. Co., In re, 20 L. D. 116.

To support location of a mining claim made by a corporation it must be shown that such corporation was organized under the laws of the United States or of some State, and that its members were citizens of the United States, and severally and individually competent to make the location.

Thomas v. Chisholm, 13 Colo. 105, p. 107.

See McKinley v. Wheeler, 130 U. S. 630.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.

Lee Doon v. Tesh, 68 Cal. 43.

In a suit on an adverse claim where the plaintiff alleges that it is a corporation organized under the laws of the State, and the answer admits such allegation, it is not necessary to prove the citizenship of the stockholders.

Jackson v. White Cloud Gold Min., etc., Co., 36 Colo. 122, p. 125.

Duncan v. Eagle Min. Co. 48 Colo. 569, p. 571.

B. ALIEN LOCATOR.

1. EFFECT AND RIGHTS.

2. NATURALIZATION—RETROACTIVE EFFECT.

1. EFFECT AND RIGHTS.

The incapacity of an alien to take a conveyance of a mining claim is open to question by the Government only.

Manuel v. Wulff, 152 U. S. 505, p. 508.

Duncan v. Eagle Min. Co. 48 Colo. 569, p. 573.

A transfer of a mining claim by a locator to an alien is not to be treated as ipso facto an abandonment.

Manuel v. Wulff, 152 U. S. 505, p. 508.

2. NATURALIZATION—RETROACTIVE EFFECT.

Naturalization has a retroactive effect and is deemed a waiver of all liability to forfeiture and a confirmation of title.

Manuel v. Wulff, 152 U. S. 505, p. 508.

Lone Jack Min. Co. v. Megginson, 82 Fed. 89, p. 93.

SECTION 2322, REVISED STATUTES.

The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the 10th day of May, 1872, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward, as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

This section is the same as section 3, act of May 10, 1872 (17 Stat. 91), p. 677.

A. PURPOSE OF MINING STATUTES.

B. COMMON-LAW RULE OF OWNERSHIP—APPLICATION TO MINERAL LANDS, p. 103.

C. MINERAL LANDS NOT ACQUIRED UNDER OTHER LAWS, p. 104.

D. GRANTING FORCE OF SECTION—VEINS AND CLAIMS, p. 104.

E. MINING LOCATIONS OR CLAIMS, p. 104.

F. LOCATOR'S POSSESSORY RIGHTS, p. 110.

G. OWNERSHIP OF VEINS, p. 127.

H. EXTRALATERAL RIGHTS, p. 133.

I. TRESPASS—PRESUMPTION AND JUSTIFICATION, p. 160.

J. PATENT FOR MINING LOCATION, p. 161.

K. RULES AND REGULATIONS OF MINERS, p. 162.

L. STATE REGULATIONS—EXTENT AND VALIDITY, p. 163.

M. JURISDICTION OF COURTS—FEDERAL QUESTIONS, p. 163.

A. PURPOSE OF MINING STATUTES.

The general purpose of the mining laws was to encourage citizens of the United States to assume the hazards of searching for and extracting the valuable minerals deposited in the public lands, and it was supposed that by reason of the stimulus thus given to the production of mineral wealth and rendering the same available to commerce and the arts the public would indirectly receive a compensation commensurate with the value of the grant, and thus the legislation is approved as embodying a wise public policy.

United States v. Rizzinelli, 182 Fed. 675, p. 682.

It was not the intention of Congress to deprive a previous locator of existing rights by any new requirements unless such intention is clearly manifested.

Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147, p. 152.

B. COMMON-LAW RULE OF OWNERSHIP—APPLICATION TO MINERAL LANDS.

The common-law rule that whoever owns the surface is entitled to all beneath does not apply to lode mining claims.

Montana Co. v. Clark, 42 Fed. 626, p. 629.

Bullion Min. Co. v. Croesus Gold, etc., Min. Co., 2 Nev. 168.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 296.

Congress intended by this section to change the common-law rule which reserved in every grant from the Crown all precious metal.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 50.

The mining statute introduced an improved modification of the common-law rule and gave to the proprietor of a vein or lode the right to pursue the same beyond his own lines and outside of the particular segment of the earth embraced within the lines of his claim extended vertically downward and was to that extent an enlargement of his common-law right, but at the same time he holds his possession subject to the same right in others, and is liable to have his land entered by an adjoining proprietor pursuing his vein or lode in its course beyond his own side lines, and to this extent his common-law possession is abridged.

Richmond Silver Min. Co. v. Davy, 10 C. L. O. 291.

This section gives the locator of a vein the right to follow it throughout its entire depth outside of the vertical side lines of the surface location contrary to the common-law rule.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 851.

The enlargement of the common-law possessory right given by this section is incident only to a claim located in the manner provided by law, and the exercise of such right operates to the abridgment of the possession of every tenement penetrated or intersected by a vein having its top or apex in a superior tenement.

Duggan v. Davey, 4 Dak. 110, p. 122.

This section, conferring what is known as the apex right, is in derogation of the common law which granted to the owner of lands all veins within the vertical lines of his land to the center of the earth, and the presumption is that the owner of the lands has the right to veins and ore bodies within his vertical side lines.

Collins v. Bailey, 22 Colo. App., 149, p. 162.

A patent for a mining claim grants the fee not to the surface and ledge only, but to the land containing the apex of the vein or lode, and the right to follow the vein upon its dip between the vertical planes of the parallel end lines is an expansion of the rights conferred by a common-law grant, and it is subject to the corresponding right of an adjoining locator to follow his vein in its course downward beneath the surface included in the first grant, and in these two respects only do the rights conferred by the statute differ from those held under the common law.

Parrot Silver, etc., Co. v. Heinze, 25 Mont. 139, p. 147.

See Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499.

Boston & Montana Min. Co. v. Montana Ore Producing Co., 188 U. S. 632.

Maloney v. King, 25 Mont. 188, p. 192.

State v. District Court, etc., 25 Mont. 504, p. 519.

State v. District Court, etc., 28 Mont. 528, p. 540.

Maloney v. King, 30 Mont. 158, p. 161.

If the mining laws of the United States had followed the rule of the common law as to underground rights and the mining laws of Spain and Mexico in confining the locator of a lode claim to perpendicular lines on every side of his claim, there would then be no reason for placing any other lines of his location upon or across patented claims, but the mining laws of the United States mark a distinct departure from these earlier laws in the matter of underground and extralateral rights.

Hidee Gold Min. Co., In re, 30 L. D. 420, p. 424.

C. MINERAL LANDS NOT ACQUIRED UNDER OTHER LAWS.

No title to lands known at the time of the sale to be valuable for minerals can be acquired under the preemption or homestead laws.

Deffeback v. Hawke, 115 U. S. 392, p. 402.

Diamond Coal, etc., Co. v. United States, 233 U. S. 236, p. 238.

Where a valuable deposit of mineral exists in vein or lode formation the area is disposable only under the provisions of the lode mining laws.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 406.

D. GRANTING FORCE OF SECTION—VEINS AND CLAIMS.

This section is the only part of the mining law which grants the right to possess any vein, lode, or ledge, and the vein originally discovered, and for the sake of which the location is made, is lumped in with other mineral deposits that may happen to exist within the limits of the surface claim, and no part of it is granted except that part the top or apex of which lies inside of the surface lines extended downward vertically.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 457.

The mining law provides no means of locating a vein except by defining a surface claim including the croppings or point at which the vein is exposed, and the part of the vein located is determined by reference to the lines of the surface claim.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 329.

See Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 456.

E. MINING LOCATIONS OR CLAIMS.

1. LOCATION STATUS—JURISDICTION OF LAND DEPARTMENT.
2. LOCATION ON APEX OF VEIN.
3. RIGHT MEASURED BY LENGTH OF APEX.
4. LOCATION ON BLANKET VEIN—APEX AND RIGHTS.
5. SUBSURFACE VEIN AS BASIS OF LOCATION.
6. VEIN AND LODGE SYNONYMOUS.
7. WHAT CONSTITUTES A VEIN OR LODGE.
8. EVIDENCES OF EXISTENCE OF VEIN OR LODGE.
9. DISCOVERY ESSENTIAL.
10. BOUNDARY PLANES DETERMINED BY SURFACE LOCATION.

1. LOCATION STATUS—JURISDICTION OF LAND DEPARTMENT.

A valid mining location invests the locator and his assigns to the exclusive beneficial use, enjoyment, and possession of the mining land covered by his location, and in so far consummates a disposition of those interests in and to such land, and therefore the status of such a location is within the jurisdiction of the Land Department.

Yard, In re, 38 L. D. 59, p. 66.

The possessory title and exclusive right of possession given under this statute is uniformly recognized by the courts and by the Land Department.

Gabathuler, In re, 15 L. D. 418, p. 420.

The exclusive right of possession and enjoyment of all the surface given by this section can not be nullified or otherwise affected by any reservation of surface rights inserted in a patent by the Land Department.

Townsite Clause, In re, 5 L. D. 256, p. 257.

See *Deffeback v. Hawke*, 115 U. S. 392.

2. LOCATION ON APEX OF VEIN.

The top or apex of a vein, within the meaning of this section, is the highest point of such vein where it approaches nearest to the surface of the earth, and where it is broken on its edge so as to appear to be the beginning or end of the vein.

Stevens v. Williams, 23 Fed. Cas. 44, p. 46.

The top or apex of a vein or lode is the end or edge or terminal point of such vein or lode nearest the surface of the earth. It is not necessary that it should be on or near or within any given distance of the surface, but if found at any depth and the locator can define on the surface the area which will inclose it, then the vein or lode may be held by such location.

Iron Silver Min. Co. v. Murphy, 3 Fed. 368, p. 373.

See *Mining Co. v. Tarbet*, 98 U. S. 463, p. 469.

The terms "top" and "apex" may in some instances refer to the floe of the lode, or that part of the lode which has been detached from the body of the mineral in the crevice and floe downward on the surface, or that may mean that part which stands in the solid rock though below a considerable body of the surface mass, but in any event as being the part of the lode which comes nearest the surface.

Stevens v. Williams, 23 Fed. Cas. 44, p. 46.

The legal apex of a vein that dips out of ground disposed of under the placer or non-mineral laws, for the purpose of discovery, is that portion of the vein within the public lands which would constitute its actual apex if the vein had no actual existence in the ground so disposed of.

Woods v. Holden, 26 L. D. 198, p. 206.

Woods v. Holden, 27 L. D. 375 (on review).

This section was framed upon the hypothesis that all lodes or veins occupy a position more or less vertical in the earth, and stand upon their edge in the body of the mountain, and the words "top" and "apex" in this connection refer to the parts which come nearest to the surface.

Stevens v. Williams, 23 Fed. Cas. 44, p. 45.

The term "outcrop" used in connection with a vein or lode, and as it concerns a vein, is an essential part of the definition of the apex or top of a vein, but it does not imply the presentation of the mineral to the naked eye on the surface of the earth, but means that it comes so near to the surface that it is found easily by digging, or it is the point at which the vein is nearest to the surface of the earth.

Stevens v. Williams, 23 Fed. Cas. 40, p. 43.

See *Mining Co. v. Tarbet*, 98 U. S. 463, p. 469.

A controversy as to what is the top or apex of a vein or lode is a question of fact to be determined by evidence, and not one of law, as these are not scientific expressions but words in common use.

Bluebird Min. Co. v. Largey, 49 Fed. 289, p. 291.

A mere swell in the mineral matter which shows itself at or near the surface and then turns over and goes on down at a declination is not a true apex within the meaning

of the statute, as this term does not mean merely the highest point in a continuous succession of rolls or waves in the elevation and depression of mineral nearly horizontal.

Stevens v. Williams, 23 Fed. Cas. 40, p. 43.

Where the apex of a vein is of such width as to be partly in one location and partly in another, the rights of the locators or owners will be determined by priority of location.

St. Louis Min., etc., Co. v. Montana Min. Co., 104 Fed. 664, pp. 667, 668.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 106 Fed. 471.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 588.

There is a difference between a lode sufficient to validate a location and an apex giving extralateral rights.

Grand Central Min. Co. v. Mammoth Min. Co., 29 Utah 490.

Approved in *Mammoth Min. Co. v. Grand Central Min. Co.*, 213 U. S. 72, p. 77.

See *Lawson v. United States Min. Co.*, 207 U. S. 1.

The law contemplates that a location shall be on one vein, and while certain rights attach to other veins whose tops or apexes are found within the surface boundaries, yet but one vein can be made the basis of a location.

Johnson, In re, 7 C. L. O. 35, p. 36.

The middle of a vein or lode must be ascertained by actual exploration and development, or the discovery shaft must, for executive purposes, be taken as the middle of the vein and the lateral measurements made therefrom.

Johnson, In re, 7 C. L. O. 35, p. 36.

See *Hope Min. Co.*, 5 C. L. O. 116.

3. RIGHT MEASURED BY LENGTH OF APEX.

A miner having an apex in his location is entitled to as much length of the vein on the strike, no matter how deep he may go in the dip, as he has length of apex within his surface lines, whether the apex reaches the surface or is found beneath the same, within the planes of his exterior boundary lines extending downward perpendicularly.

Fitzgerald v. Clark, 17 Mont. 100, p. 116.

When a locator owns an apex, whether it extends through the entire or through but a part of his location, he necessarily owns an equal length of such vein to its utmost depth.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 851.

4. LOCATION ON BLANKET VEIN—APEX AND RIGHTS.

The apex of a blanket vein is regarded as coextensive with the space between the side lines, and every part or point of such apex as much the middle of the vein as any other part.

Homestake Min. Co., In re, 29 L. D. 689, p. 690.

Belligerent & Other Lode Min. Claims, In re, 35 L. D. 22.

A blanket vein is one where the ore body covers the entire area within the limits of the side and end lines of the location.

Homestake Min. Co., In re, 29 L. D. 689, p. 690.

Belligerent & Other Lode Min. Claims, In re, 35 L. D. 22, p. 25.

The right to an entire lode can not be asserted under a location covering a part only of its width, and the location is only good for the part within the lines extended vertically downward.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222.

See *Bullion, Beck & Champion Min. Co. v. Eureka Min. Co.*, 5 Utah 3, p. 55.

5. SUBSURFACE VEIN AS BASIS OF LOCATION.

A valid location may be properly laid upon a vein though it does not crop out upon the surface. If it lies entirely beneath the surface, and the course of its apex can be ascertained by sinking shafts at different points, such shafts may be adopted as indicating the position and course of the vein. In such case locations may be properly made on the surface, so as to secure a right to the vein beneath; but the act of Congress must be followed in laying claims and locations, where the vein does crop out along the surface, or it is so slightly covered by foreign matter that the course of its apex can be ascertained by ordinary surface exploration.

Mining Co. v. Tarbet, 98 U. S. 463, p. 469.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 589.

A vein or lode somewhat below the plane of the horizon is within the meaning of this section, and may be pursued beyond the side lines of the claim in which it has outcrop.

Leadville Co. v. Fitzgerald, 15 Fed. Cas. 98, p. 100.

6. VEIN AND LODE SYNONYMOUS.

The words "vein," "lode," or "ledge," are used in the statute to designate a mineral deposit in rock in place, and they are supposed to be nearly synonymous in meaning.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 533.

Iron Silver Min. Co. v. Cheesman, 8 Fed. 297, p. 301.

See *United States v. Iron Silver Min. Co.*, 128 U. S. 673, p. 680.

The words "vein," "lode," and "ledge" used in this section are regarded as synonymous.

Synnott v. Shaughnessy, 2 Idaho, 122 (111).

7. WHAT CONSTITUTES A VEIN OR LODE.

The usual definition of a vein or lode is an aggregation of mineral matter containing ores in fissures of rocks.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 54.

A vein or lode as used in this statute applies to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 531.

Eureka Consol. Min. Co. v. Richmond, 8 Fed. Cas. 819.

Stevens v. Williams, 23 Fed. Cas. 40.

Mammoth Min. Co. v. Grand Central Min. Co., 213 U. S. 72, p. 77.

A lode or vein is a body of mineral or mineral-bearing rock within defined boundaries in the general mass of the mountain. A body of mineral or mineral-bearing rock in the general mass of the mountain, so far as it may continue unbroken and without interruption, may be regarded as a lode, whatever the boundaries may be.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 531.

Mammoth Min. Co. v. Grand Central Min. Co., 213 U. S. 72, p. 77.

Wheeler v. Smith, 23 L. D. 395, p. 399.

Where there are well-defined boundaries, very slight evidence of ore within such boundaries is sufficient to prove the existence of a lode. Such boundaries constitute a fissure, and if ore is found therein, though at considerable intervals, and in small quantities, it is called a lode or vein.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 536.

Mammoth Min. Co. v. Grand Central Min. Co., 213 U. S. 72, p. 77.

If a vein or lode was formed originally between different strata or different kinds of rock, and by subsequent upheaval or depression the whole mass was broken into fragments and a new fissure formed on the face of the inflected rock, and a new or different position thus given the vein or lode, it gains by that circumstance a new end or terminal point, and it may be held by a proper location.

Iron Silver Min. Co. v. Murphy, 3 Fed. 368, p. 373.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 670.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 942.

Fissure veins and lodes exist and are continuous without having any filling at certain points or places of mineral matter.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 544.

A fissure vein or lode may have, in addition to the clear fissure filling of mineral, a considerable amount of decomposed wall rock, clay, etc.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 544.

A lode or vein in its unworked and undeveloped stage can not be known and surveyed so as to plat it and make a diagram of it.

Helvetia Lode, In re, Copp's Min. Lands 276, p. 278.

Johnson, In re, 7 C. L. O. 35, p. 36.

A lode may, and often does, contain more than one vein.

See United States v. Iron Silver Min. Co., 128 U. S. 673, p. 680.

8. EVIDENCES OF EXISTENCE OF VEIN OR LODGE.

Whenever it appears that a fissure has existed at any time within a continuous body of ore therein which may have been interrupted by some subsequent convulsion the character of the deposit remains the same as if no interruption had occurred; but if there is an intervening space in the "contact" so barren in its continuity as to show a separate and distinct body of ore which has always been such, then it could not be followed beyond the side lines of a location.

Stevens v. Williams, 23 Fed. Cas. 44, p. 47.

To defeat a location on a valuable part of a vein or lode in any of the elements which attach to a proper location, by reason of the connection of such vein or lode with adjacent parts which are barren or worthless, the evidence must clearly establish the connection and unity of the several parts.

Iron Silver Min. Co. v. Murphy, 3 Fed. 368, p. 375.

A continuous body of mineral or mineral-bearing rock extending through loose and disjointed rocks is a lode as fully and certainly as those found in more regular formation; but if it is not continuous or if not found in a fissure or crevice which is itself continuous, it can not then be called by that name, as it lacks the individuality and extension which are essential qualities of a vein or lode.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 537.

Mammoth Min. Co. v. Grand Central Min. Co., 213 U. S. 72, p. 77.

The working levels in a mine may not be conclusive of the course of the vein or ledge where there are large "horses" in the mine and the upper and lower surfaces of the workings have been conformed to these "horses."

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 601.

9. DISCOVERY ESSENTIAL.

See secs. 2310, p. 23; 2320, p. 64; 2324, p. 181; 2325, p. 306; 2330, p. 520.

Locations are made on the surface, and there must be a discovery of a vein or lode having its top or apex within the limits of the surface lines.

Gwillim v. Donnellan, 115 U. S. 45, p. 47.

Hanson v. Craig, 170 Fed. 62, p. 64.

The lode or vein must lie within the limits of the location which is made by reason of its discovery.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

Any portion of the apex on the course or strike of a vein found within the limits of a claim is a sufficient discovery.

Larkin v. Upton, 144 U. S. 19, p. 23.

The top or apex of a vein must be within the boundary of a claim to enable the locator to perfect his location, but any portion of the apex or course or strike of the vein found within the limits of the claim is a sufficient discovery to entitle the locator to obtain title.

Larkin v. Upton, 144 U. S. 19, pp. 21-23.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 148.

A miner who discovers a lead, lode, or ledge with a vein or crevice of quartz, with one well defined wall, containing a valuable mineral deposit, is entitled to locate, record, and hold the same upon compliance with the provisions of the law.

Shreve v. Copper Bell Min. Co., 11 Mont. 309, p. 333.

The loss of a discovery upon which a mining location is based invalidates the location unless another and sufficient discovery has been made within the remaining portion prior to an application for patent or the assertion of an adverse claim.

Gwillim v. Donnellan, 115 U. S. 45, pp. 50, 51.

Antediluvian Lode & Mill Site, In re, 8 L. D. 602.

Independence Lode, In re, 9 L. D. 571.

Lone Dane Lode, In re, 10 L. D. 53.

Girard v. Carson, 22 Colo. 345.

See Robbins, In re, 42 L. D. 481, p. 484.

This section preserves to the miner the full benefit of his discovery.

Butte & Boston Min. Co. v. Societe Anonyme des Mines de Lexing, 23 Mont. 177, p. 193.

A person who in good faith makes a mining location, remains in possession, and with due diligence proceeds to make a discovery is fully protected against all forms of forcible, fraudulent, surreptitious, or clandestine entry or intrusion upon his possession.

Johanson v. White, 160 Fed. 901, p. 902.

See Cook v. Johnson, 3 Alaska 506, p. 541.

This section gives the exclusive right of possession only to one who has made a valid location, one of the essentials of which is a discovery of mineral, and prior to that time all mineral land is in law vacant and open to location, subject, however, to the rule that no prospector is authorized by any form of forcible, fraudulent, or surreptitious conduct to enter on or intrude upon the actual possession of another prospector.

Hanson v. Craig, 170 Fed. 62, p. 64.

Parties having no interest in an existing valid location of a mining claim can not predicate any claim or right whatever to veins or lodes the apexes of which are within the lines of an existing location, either by discovery or by location, and a discovery of minerals within the lines of an existing valid location can not form the basis of a different and subsequent location.

Golden Link Min., etc., Co., In re, 29 L. D. 384, p. 386.

10. BOUNDARY PLANES DETERMINED BY SURFACE LOCATION.

Whatever inconvenience or hardship may happen from the fact that the end lines as marked on the surface may vary from a right angle to the true course of the vein, it is better that the boundary planes should be definitely determined by the lines of

the surface location than that they should be subject to perpetual readjustment according to subterranean developments by subsequent operations, as such readjustments would create uncertainty in titles to mining claims.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 207.

F. LOCATOR'S POSSESSORY RIGHTS.

1. CONSTRUCTION OF LOCATION RIGHTS.
2. OBJECT OF LOCATION STATUTE.
3. EFFECT OF LOCATION AS A GRANT.
4. OWNERSHIP ACQUIRED BY LOCATION.
5. EXCLUSIVE RIGHT TO POSSESSION OF SURFACE.
6. EXTENT AND PURPOSE OF SURFACE POSSESSION.
7. RIGHT AS AGAINST INTRUDER.
8. POSSESSIO PEDIS—MEANING AND EXTENT.
9. RIGHT OF POSSESSION SUPERIOR TO TOWN-SITE PATENT.
10. PRIOR RIGHTS PROTECTED.
11. OWNERSHIP OF SURFACE AND VEINS.
12. EXTENT OF SURFACE OWNERSHIP AND POSSESSION.
13. SURFACE POSSESSION PROTECTED—PRIORITY OF RIGHT.
14. RIGHT TO MAINTAIN OR DEFEND POSSESSION.
15. NATURE OF LOCATION AS PROPERTY.
16. MINING LOCATION AS REAL PROPERTY.
17. SALE AND TRANSFER OF CLAIMS—STATUTE OF FRAUDS.
18. TITLE ACQUIRED BY POSSESSION—STATUTE OF LIMITATIONS.
19. RIGHTS OF HEIRS AND ASSIGNS.
20. LOCATOR NOT REQUIRED TO PURCHASE OR OBTAIN PATENT.
21. LOCATIONS CAN NOT BE SET APART FOR PUBLIC USE.

1. CONSTRUCTION OF LOCATION RIGHTS.

Where a location is properly made along the course of a vein or lode in the form of a parallelogram and the vein extends within the side lines from one end line to the other, the statute expressly determines the rights of the locator, and there is nothing left for the courts to construe.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 290.

There is nothing in this section to construe, when a mining location is made, so that the strike of the vein crosses the location from end line to end line and at right angles thereto.

King v. Amy & Silversmith Min. Co., 9 Mont. 543, p. 564.

See *Mining Co. v. Tarbet*, 98 U. S. 463, p. 469.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 205.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 472, p. 485.

The extralateral rights given under this section should neither be extended nor restricted by the courts.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 549.

A general principle should pervade and control the various conditions found to exist in different locations, and its guiding star should be the preservation of the essential right given by the statute to follow the lode upon its dip as well as upon the strike to so much thereof as its apex is found within the surface lines of the location.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 549.

All property rights to any vein or lode found within the surface boundaries of a claim are derived from this section, but the section confers no right if such ground has been previously patented to another.

Jefferson Min. Co. v. Anchoria-Leland Min., etc., Co., 32 Colo. 176, p. 186.

The interpretation placed upon this section by the Government officers, who have to act thereunder and the practice thereunder for many years, is entitled to great weight in its construction by the courts.

Montana Co. v. Clark, 42 Fed. 626, p. 629.

See *United States v. Moore*, 95 U. S. 760.

Northern Pacific R. Co. v. Barden, 46 Fed. 592, p. 623.

2. OBJECT OF LOCATION STATUTE.

A valid and subsisting location of mineral lands has the effect of a grant by the United States of the right of present and exclusive possession, and a prior location operates as a bar to any subsequent location.

Gwillim v. Donnellan, 115 U. S. 45, p. 49.

Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 97.

Chilberg v. Consolidated Min. Co., 3 Alaska 235, p. 238.

Worthen v. Sidway, 72 Ark. 215, p. 225.

Lalande v. McDonald, 2 Idaho 283, p. 289.

McFeters v. Pierson, 15 Colo. 201, p. 204.

Peoria & Colorado Min., etc., Co. v. Turner, 20 Colo. App. 474, p. 479.

Wills v. Blain, 4 N. Mex. 378, p. 383.

Wills v. Blain, 5 N. Mex. 238.

Nash v. McNamara, 30 Nev. 114, p. 132.

Duffy v. Mix, 24 Oreg. 265, p. 268.

Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 564.

This section is a congressional grant of portions of the public lands, including veins and lodes, containing valuable mineral deposits in the same sense that other acts of Congress are grants of portions of the public domain to settlers who establish homes thereon and cultivate and improve their claims, as a grant in each case is conditional, and no title passes from the Government until the conditions are performed.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 107.

A valid and subsisting location of mineral lands operates as a bar to any second or subsequent location.

Gwillim v. Donnellan, 115 U. S. 45, p. 49.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 226.

Lalande v. McDonald, 2 Idaho 283, p. 289.

Nash v. McNamara, 30 Nev. 114, p. 132.

A valid location of a mining claim segregates or cuts out the ground located from the public lands, and it becomes the property of the locator, and the same ground can not be located or possessed by another until the original locator either abandons the claim or forfeits it under the statute.

Meydenbauer v. Stevens, 78 Fed. 787, p. 793.

Saint Louis Min. Co. v. Montana Min. Co., 171 U. S. 650, p. 655.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 227.

Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 97.

Reed v. Munn, 148 Fed. 737, p. 757.

Stenfjeld v. Espe, 171 Fed. 825, p. 828.

See *Omar v. Soper*, 11 Colo. 380.

Sierra Blanca Min., etc., Co. v. Winchell, 35 Colo. 13.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 270.

In a lode location the land located is segregated from the public mineral domain, and the grant confers upon the locator the exclusive right of possession and enjoyment of the surface and any lode having its top or apex within his surface boundaries.

Mount Rosa Min., etc., Co. v. Palmer, 26 Colo. 56, p. 59.

The object of location statutes is not merely to fix the amount of surface territory allowed the locator for working purposes, but they are intended to protect him in the exclusive possession and enjoyment of his lode and all other veins the tops or apexes of which are within his surface boundaries.

Armstrong v. Lower, 6 Colo. 393, p. 399.
See *Sanders v. Noble*, 22 Mont. 110, p. 121.

The possessory title and the exclusive right of possession and enjoyment of the surface of a mining claim and of all veins or lodes apexing therein, granted by this section, is not in anywise affected by the provisions of section 2326 R. S.

Nash v. McNamara, 30 Nev. 114, p. 135.

There is no conflict between sections 2322 and 2336 R. S.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 504.

3. EFFECT OF LOCATION AS A GRANT.

The entire mining statute in connection with this section is a preemption law, and by the location of a mining claim thereunder the grounds located are withdrawn from the public domain the same as if made by a valid grant from the United States under authority of law, or the possession under a valid and subsisting homestead or preemption entry.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 413.
Mantle v. Noyes, 5 Mont. 274, p. 290.

A valid location of a mineral lode or vein duly made and perfected gives to the locator the exclusive right to such vein or lode.

Pike's Peak Lode, In re, 10 L. D. 200, p. 202.
See *Noyes v. Mantle*, 127 U. S. 348.

The locator of a mining claim can acquire no rights under this section where the offer and permission of the United States under this section, as the foundation of his right, were wanting at the time he did the acts under which he attempts to assert the right.

Swanson v. Sears, 224 U. S. 180, p. 181.

The words of a grant under this section are comprehensive and technical, and are the words habitually used in conveyancing to convey to the grantee immediately all the rights intended to be conveyed. Where the term "heirs" is used in such a grant it is construed as a limitation of the estate granted and not as a word of purchase, and the locator would take to himself the entire estate granted. This is the effect of a grant in general terms to a locator, his heirs, and assigns.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 110.

The locator of a mining claim is given a higher estate than is given to the settler or locator under any other of the land laws in that he has the right to extract and convert to his own use all the ores and precious metals which may be found within his surface lines without purchasing or paying for the land.

O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 854, p. 855.

4. OWNERSHIP ACQUIRED BY LOCATION.

The locator of a mining claim under existing mining laws is not a trespasser, but is, in effect, as to the right of possession and to the appropriation of the minerals, the assignee of the United States so long as he complies with the conditions of the statute; but he is not required to take any steps to purchase the land or to obtain a patent therefor.

Chapman v. Toy Long, 5 Fed. Cas. 497.
United States v. Nelson, 27 Fed. Cas. 86.
Piru Oil Co., In re, 16 L. D. 117, p. 119.
Shafer v. Constans, 3 Mont. 369, p. 371.

The ownership and possession of a vein at the surface carries with it the ownership and possession of all that pertains to the location, as the mining right under the statute is an underground one and is secured by a single location the title to which may be conveyed by one patent.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 583.
Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 121 Fed. 973.
St. Louis Min. Co. v. Montana Min. Co., 194 U. S. 235.
Work Min., etc., Co. v. Doctor Jack Pot Min. Co., 194 Fed. 620, p. 628.

While the United States under this section retains the naked legal title in the land, it has in fact parted with all that is valuable in the mines.

Forbes v. Gracey, 9 Fed. Cas. 401, p. 403.

The surface right is simply an adjunct to a lode claim.

Silver Queen Lode, In re, 16 L. D. 186.

See Engineering Min. & Development Co., In re, 8 L. D. 361.

The rights of a locator under this section are superior to any right granted by the following sections.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 501.

Locating upon the land and performing the required annual service gives the locator the right of possession without any written instrument.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.

The property rights conferred by a lode location are both intralimital and extralateral, the first embracing all within the boundaries of the claim, and the second, while depending for existence for something within such boundaries, may, under certain conditions, extend beyond such boundaries.

Jefferson Min. Co. v. Anchoria-Leland Min., etc., Co., 32 Colo. 176, p. 185.

This section standing alone might restrict the rights of a locator of a mining claim to the use and enjoyment of the surface only for the purpose of following the vein upon its strike and dip under the prescribed limitations as to adjoining lands; but read in connection with other sections it is the "lands" in which mineral deposits are found which are open to occupation and purchase and for which patent may be obtained, and it is by virtue of the title secured to such land that the purchaser obtains any right whatever with reference to mineral deposits therein, and upon a valid location of a mining claim of a different portion of land is founded the right of possession.

Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139, p. 146.

The possession of the ore body at the surface carries with it the possession of all that belongs to the location, as the mining right is an integral one secured by a single location and the title thereto is conveyed by one patent.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 121 Fed. 973, p. 977.

See Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 583.

A possession or possessory right under a claim established according to law is fully recognized according to acts of Congress.

Chambers v. Harrington, 111 U. S. 350, p. 353.

A locator who has done nothing more than locate a mining claim upon the public domain has a qualified property right only, which may be abandoned at any time or forfeited, and in such case the paramount ownership is in the Government; and upon abandonment or on his failure to comply with the conditions upon which his continued right of possession depends, his entire estate reverts to the Government, as it has retained the title with a valuable residuary and reversionary interest, and this

interest it has the right to protect, and as against this interest and title of the Government this section grants to the locator the exclusive right of possession and enjoyment of the surface of the location.

United States v. Rizzinelli, 182 Fed. 675, p. 681.

The doctrine that the owner of the surface owns all beneath until it is shown to belong to another applies in mining claims only when there is doubt as to what apex an underground body of ore may belong.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 106 Fed. 471, p. 474.

5. EXCLUSIVE RIGHT TO POSSESSION OF SURFACE.

This section gives the exclusive right of possession and enjoyment of all the surface included within the location lines on compliance with all the laws.

Belk v. Meagher, 104 U. S. 279, p. 281.

Noyes v. Mantle, 127 U. S. 348, p. 351.

King v. Amy & Silversmith Min. Co., 152 U. S. 222, p. 227.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 225.

Teller v. United States, 113 Fed. 273, p. 281.

Malone v. Jackson, 137 Fed. 878, p. 880.

Reed v. Munn, 148 Fed. 737, p. 757.

Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 97.

Coleman v. McKenzie, 28 L. D. 348, p. 349.

Yard, In re, 38 L. D. 59, p. 62.

Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 449.

Du Prat v. James, 65 Cal. 555, p. 557.

Wilhelm v. Silvester, 101 Cal. 358, p. 359.

Quigley v. Gillett, 101 Cal. 462, p. 469.

Harper v. Hill, 159 Cal. 250, p. 253.

Keller v. Trueman, 15 Colo. 143, p. 145.

Burke v. McDonald, 2 Idaho 339 (310).

Mantle v. Noyes, 5 Mont. 274, p. 290.

United States v. Ringeling, 8 Mont. 353, p. 359.

Ferris v. McNally, 45 Mont. 20, p. 24.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 455.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 33.

Wright v. Lyons, 45 Oreg. 167, p. 172.

Naah v. McNamara, 30 Nev. 114, p. 132.

See Butte City Water Co. v. Baker, 196 U. S. 119.

Suessenbach v. First National Bank, 5 Dak. 477, p. 498.

Fitzgerald v. Clark, 17 Mont. 100, p. 122.

The exclusive right of possession given the locator by the statute continues during the entire life of the location.

St. Louis Min. Co. v. Montana Min. Co., 171 U. S. 650, p. 655.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 227.

Congress has made the possession of that part of the public lands which is valuable for minerals separable from the fee, and provided for the existence of an exclusive right to the possession, while the paramount title to the land remains in the United States.

Belk v. Meagher, 104 U. S. 279, p. 283.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 551.

Coleman v. McKenzie, 28 L. D. 348, p. 349.

Burke v. McDonald, 2 Idaho 339.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 268.

See South End Min. Co. v. Tinney, 22 Nev. 19, p. 62.

Prior to the payment of any money the interest in a mining claim is a mere right to the exclusive possession of the land based upon the performance of certain conditions, a failure to fulfill which forfeits the locator's interest in the claim.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.

Helena Gold & Iron Co. v. Baggaley, 34 Mont. 464, p. 475.

A location upon a mining claim valid and in full force entitles the locator to the exclusive possession of the land, and operates as a bar to any second location.

Belk v. Meagher, 104 U. S. 279, p. 284.

Gwillim v. Donnellan, 115 U. S. 45, p. 49.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 78.

Owners of unpatented mining claims located upon mineral lands of the United States are entitled to the exclusive possession of such claims so long as they comply with the requirements of the law respecting possessory rights, and they are not required to apply for a patent at any time in order to preserve or protect such possessory rights.

Nome & Sinook Co. v. Townsite of Nome, 34 L. D. 276, p. 278.

Original locators acquire by virtue of their locations a possessory title to the land therein embraced and an exclusive right of possession and enjoyment, and this right excludes the acquirement of any right or title by others.

Piru Oil Co., In re, 16 L. D. 117, p. 119.

See *Chapman v. Toy Long*, 4 Sawy. 28; 8 Fed. Cas. 497.

Wolfley v. Lebanon Min. Co., 4 Colo. 112.

The owner of a mining claim has the exclusive enjoyment of all the surface within the lines of his location without regard to the width or extent of the vein or lode.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

This section gives the locator the right to enjoy the profits of all the surface included within the boundary lines of his claim, and if in possession, by himself or agent, no other person has a right to enter thereon and take therefrom any mineral.

Fuller v. Harris, 29 Fed. 814, p. 819.

This section provides both affirmatively and negatively that the locator shall have exclusive possession of the surface and that no one has the right to disturb him in such possession.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 70.

While the Government retains the legal title and authority to make other disposition of the property, it permits discoverers of mines to locate claims and grants to such locators and their heirs and assigns the right to have exclusive possession of the surface within the boundaries of their claims, and to retain possession so long as work in developing the mine and making improvements thereon to the statutory amount shall be done annually upon each claim.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 110.

The exclusive right of possession and enjoyment of the surface of a mining claim is an equitable title to such possessory right, and after patent issues the locator has "an equitable title to the fee."

Harriet Min. Co. v. Phoenix Min. Co., 9 C. L. O., 165.

In many particulars the right of a locator of a mining claim is similar to the right of profit a prendre, but the owner of this right of profit a prendre has no such right as the exclusive possession and enjoyment of the mine from which he takes the ore.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 552.

The rights of a locator of a mining claim within the boundaries of a forest reservation are substantially those of one who locates such a claim upon the public domain and gives the locator the right of exclusive possession.

United States v. Rizzinelli, 182 Fed. 675, p. 680.

A locator or a purchaser of a mining claim that has been properly located and marked out on the ground, and who is personally or by agents present upon the claim, working and developing it and keeping up the boundary stakes and marks thereon, is in

the actual possession of the entire claim and such possession extends to the boundary lines of the claim so marked.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 539.
 North Noonday Min. Co. v. Orient Min. Co., 11 Fed. 125, p. 128.
 Dwinnell v. Dyer, 145 Cal. 12, p. 20.

6. EXTENT AND PURPOSE OF SURFACE POSSESSION.

The purpose of Congress was to secure the fullest working of the mines and the complete development of the mineral property by securing to the locator the undisturbed possession of not less than a specified amount of surface, and this surface is as much the property of the locator as the vein or lode discovered and located by him.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 226.
 Jones v. Wild Geese Min., etc., Co., 177 Fed. 95, p. 97.

The phrase "exclusive enjoyment" in this section is not self-explanatory or unequivocal, and must be interpreted in the light of the general purpose of the law and in harmony with its other provisions; and the reasonable construction of this section, considering the other sections of the mining laws and other laws granting rights to the public domain, must necessarily limit such exclusive enjoyment for mining purposes only.

United States v. Rizzinelli, 182 Fed. 675, p. 681.

This grant of present possession is for the purpose of carrying on mining operations as long as the locator performs the required conditions.

Teller v. United States, 113 Fed. 273.
 United States v. Rizzinelli, 182 Fed. 675, p. 683.

Of the two titles to public lands valuable chiefly for minerals, the first confers the right to the possession for the purpose of carrying on mining operations on certain conditions, and the second is an absolute title which may or may not be acquired by the locator by other and a different consideration, and this title depends on no conditions.

Teller v. United States, 113 Fed. 273, p. 281.

The right of a locator of a mining claim to the enjoyment of the surface is limited to uses incident to mining operations, and the lands in a forest reserve embraced in a mining claim continue to constitute a part of the reserve notwithstanding the mineral location, subject to all the legal rights and privileges of the locator.

United States v. Rizzinelli, 182 Fed. 675, p. 684.

A valid location of a mining claim entitles the locator to the exclusive right of possession and enjoyment of all the surface ground included within the lines of his location, and this right does not mean the right to use it for mining purposes only, but means an absolute sale when the terms and conditions are complied with.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 413.
 Tye Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 450.
 Mantle v. Noyes, 5 Mont. 274, p. 290.
 Talbott v. King, 6 Mont. 76.

7. RIGHT AS AGAINST INTRUDER.

A locator has the right of possession against all intruders and the right to protect his possession and to work the land for valuable minerals.

Miller v. Chrisman, 140 Cal. 440, p. 450.
 Garthe v. Hart, 73 Cal. 541.

A mineral claimant in actual possession of land is entitled to hold it as against every other one except the United States.

New England, etc., Oil Co. v. Congdon, 152 Cal. 211, p. 213.
 Harris v. Kellogg, 117 Cal. 484.

A locator is entitled to the present possession of his mining claim as against all the world, and the United States only retains the legal ownership.

Seymour v. Fisher, 16 Colo. 188.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 33.

The actual possession of a mining claim is sufficient evidence of title as against a mere intruder.

Duggan v. Davey, 4 Dak. 110, p. 123.

Campbell v. Rankin, 99 U. S. 261.

North Noonday, etc., Min., Co. v. Orient Min. Co., 1 Fed. 522, p. 525.

Crossman v. Pendery, 8 Fed. 693.

Grover v. Hawley, 5 Cal. 425.

English v. Johnson, 17 Cal. 108.

Proof of possession is not sufficient to hold a mining claim against a valid location, but it is sufficient in trespass or ejection as against a stranger.

Noyes v. Black, 4 Mont. 527, p. 534.

Patchen v. Keeley, 19 Nev. 404, p. 414.

8. POSSESSIO PEDIS—MEANING AND EXTENT.

See sec. 2320.

Every miner upon the public domain is entitled to hold the place in which he may be working against all others having no better right, and the actual possession of the first arrival will be protected to the extent needed to give him room to work and to prevent probable breaches of the peace; but while his *pedis possessio* is thus protected, it must yield to an actual location or a valid discovery made by one who has located peaceably and neither clandestinely nor with a fraudulent purpose.

Hanson v. Craig, 170 Fed. 62, p. 65.

Zollers v. Evans, 5 Fed. 172.

Erhardt v. Boaro, 8 Fed. 692.

Omar v. Soper, 11 Colo. 380, p. 385.

See *Dower v. Richards*, 151 U. S. 658.

Crossman v. Pendery, 8 Fed. 693.

Van Zandt v. Argentine Min. Co., 8 Fed. 725.

Meydenbauer v. Stevens, 78 Fed. 787.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568.

Thallman v. Thomas, 111 Fed. 277.

Malone v. Jackson, 137 Fed. 878.

Johanson v. White, 160 Fed. 901.

Cook v. Klonos, 164 Fed. 529.

Bulette v. Dodge, 2 Alaska 427.

Charlton v. Kelly, 2 Alaska 532.

Field v. Grey, 1 Ariz. 404.

Hees v. Winder, 30 Cal. 349, p. 358.

Du Prat v. James, 65 Cal. 555.

Horswell v. Ruiz, 67 Cal. 111.

New England, etc., Oil Co. v. Congdon, 152 Cal. 211.

Armstrong v. Lower, 6 Colo. 581.

Weese v. Barker, 7 Colo. 178.

Becker v. Pugh, 9 Colo. 589.

Brandt v. Wheaton, 52 Cal. 430.

Belk v. Meagher, 3 Mont. 65.

Noyes v. Black, 4 Mont. 527.

Hopkins v. Noyes, 4 Mont. 550.

Sanders v. Noble, 22 Mont. 110, p. 121.

Gemmell v. Swain, 28 Mont. 331.

Roberts v. Wilson, 1 Utah 292, p. 296.

Copper Globe Min. Co. v. Allman, 23 Utah 410.

Whiting v. Straup, 17 Wyo. 1.

The locator of a mining claim on compliance with the United States statutes, the local statutes, and the rules and regulations of the mining district is entitled not only

to the exclusive right of possession of all the surface included within the lines of his location but also of all veins, lodes, and ledges throughout their entire depth the top or apex of which lies inside of his surface lines extended downward vertically.

- Gwillim v. Donnellan, 115 U. S. 45, p. 47.
 Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 206.
 Noyes v. Mantle, 127 U. S. 348, p. 351.
 King v. Amy & Silversmith Min. Co., 152 U. S. 222, p. 227.
 Bradford v. Morrison, 212 U. S. 389, p. 394.
 North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 531.
 Iron Silver Min. Co. v. Murphy, 3 Fed. 368, p. 371.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 676.
 Fuller v. Harris, 29 Fed. 814, p. 819.
 Black v. Elkhorn Min. Co., 49 Fed. 549, p. 551.
 Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 291.
 Doe v. Waterloo Min. Co., 54 Fed. 935.
 Book v. Justice Min. Co., 58 Fed. 106, p. 128.
 Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 546.
 Meydenbauer v. Stevens, 78 Fed. 787, p. 793.
 Gillis v. Downey, 85 Fed. 483, p. 487.
 Saint Louis Min., etc., Co. v. Montana Min. Co., 113 Fed. 900, p. 901.
 Last Chance Min. Co. v. Bunker Hill, etc., Min. Co., 131 Fed. 579, p. 590.
 O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 854, p. 855.
 Original Consol. Min. Co. v. Abbott, 167 Fed. 681, p. 683.
 Yosemite National Park, In re, 25 L. D. 48, p. 50.
 Golden Link Min., etc., Co., In re, 29 L. D. 384, p. 386.
 Campbell, In re, 4 C. L. O. 102.
 Dwinell v. Dyer, 145 Cal. 12, p. 20.
 Peoria & Colorado Min., etc., Co. v. Turner, 20 Colo. App. 474, p. 478.
 Duggan v. Davey, 4 Dak. 110.
 Swanson v. Kettler, 17 Idaho 321, p. 331.
 See Lavagnino v. Uhlig, 198 U. S. 443.
 Brown v. Killabrew, 21 Nev. 437, p. 438.
 Rose v. Richmond, 17 Nev. 25.
 Bullion, Beck & Champion, etc., Min. Co. v. Eureka Min. Co., 5 Utah 3, p. 55.
 Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas. 98; 4 Mor. Min. 380.

A prospector can show a right to the possession of a mining claim before patent only by showing the actual *possessio pedis*.

- Funk v. Sterrett, 59 Cal. 613.
 Patchen v. Keeley, 19 Nev. 404, p. 413.

In the absence of physical markings on the surface of a mining claim, and in the absence of proof of mining rules or customs, the right of a mineral claimant does not extend beyond the *possessio pedis*.

- Hess v. Winder, 30 Cal. 349, p. 358.
 Roberts v. Wilson, 1 Utah 292, p. 296.

9. RIGHT OF POSSESSION SUPERIOR TO TOWN-SITE PATENT.

The exclusive right of possession and enjoyment of all the surface within the lines of a location under this section does not necessarily prevent a town-lot claimant from holding under patent issued to the town, but the rights of such town-lot claimant are subordinate to those of the mineral claimant.

- Rico Townsite, In re, 1 L. D. 556.
 See Townsite Clause, In re, 5 L. D. 256.

10. PRIOR RIGHTS PROTECTED.

This section preserves to the locator or miner all rights acquired under the act of 1866, and confers upon him additional rights and grants to him the exclusive right of possession to the quantity specified of surface ground, and to all veins, lodes, and ledges the tops or apices of which lie within the surface lines of his location, with the

right to follow these veins or lodes to any depth, but confines him in this respect within the vertical planes drawn downward through the end lines of his location, and this applies to claims previously located.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.
 See *Blake v. Butte Silver Min. Co.*, 2 Utah 54, p. 62.

This section recognizes locations made prior to the passage of the act the surface lines of which include more than one vein or lode, and reaches the case of locators who had located claims while the act of 1866 was in force the surface lines of which included the tops of more than one lode, and confirms their possession to all the surface, including all lodes within their lines.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Since the act of May 10, 1872 (17 Stat. 91), a valid location of a mining claim can not be made within the limits of an existing location, as the locator of such prior claim has the exclusive right of possession and enjoyment of all the surface included within his location lines, as well as all the veins, lodes, or ledges throughout their entire depth.

Branagan v. Dulaney, 2 L. D. 744, p. 748.

11. OWNERSHIP OF SURFACE AND VEINS.

Where the owner of a mining claim is in possession of its surface and is asserting title to the entire claim, his possession, as a matter of law, extends to every part of the claim, whether vertically beneath its surface or within the extralateral rights conferred by the mining statutes, that is not in the actual possession of an adverse holder.

Golden Cycle Min. Co. v. Christmas Gold Min. Co., 204 Fed. 939, p. 940.
 See *United States Min. Co. v. Lawson*, 134 Fed. 769.

A locator is not confined to the vein upon which he bases his location and upon which the discovery was made; but all veins or lodes having their apices within the planes of his surface lines extended downward are his, and the possession of the surface is possession of all such veins or lodes.

Campbell v. Ellet, 167 U. S. 116, p. 119.
Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 508.
Vulcano Lode Min. Claim, In re, 30 L. D. 482, p. 483.

The controlling principle of this section is that the miner has title to all veins the apex of which lies within the vertical planes of his surface lines, although such veins in their downward course cross the vertical plane of a side line, provided that such exterior parts lie within the projected planes of the end lines.

King v. Amy & Silversmith Consol. Min. Co., 9 Mont. 543, p. 572.

A valid location of a mining claim gives the locator, his heirs, and assigns not only rights with respect to the particular vein, lode, or ledge, the discovery of which forms the basis of location, but also the exclusive right of possession and enjoyment of all the surface included within the location lines, and of all veins, ledges, or lodes throughout their entire depth the tops or apexes of which lie inside of such surface lines extended downward vertically and lying between vertical planes drawn downward through the end lines continued in their own direction, although such veins, lodes, or ledges may, in their downward course, depart from a perpendicular and extend outside the vertical side lines of the location.

Vulcano Lode Min. Claim, In re, 30 L. D. 482, p. 483.

This section gives the exclusive right of possession and enjoyment to the first locator of all veins and lodes having their apices within the lines of his surface location. In such case there is but one grant, and it is in nowise separable into parts and apportioned between different locators, whether there are one or several such tops or apices.

Bushnell v. Crooke Min., etc., Co., 148 U. S. 682, p. 687.

As this section gives the exclusive right of possession and enjoyment of all the surface within the lines of the location, and of all veins and lodes the tops or apices of which are inside of such lines, it therefore gives to a locator something more than the right to the vein, which is the occasion of the location.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 508.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1.

See Clipper Min. Co. v. Eli Min., etc., Co., 29 Colo. 377, p. 385.

A mining claim is a possessory title that is legal in character, and the miner may enjoy his possession, may claim all the lodes whose apices lie within his surface lines, may mine and extract all minerals there are to whatever depth, and his estate comes as a grant from the United States as the owner of the soil by virtue of the acts of Congress.

Tyee Consolidated Min. Co. v. Langstedt, 1 Alaska 439, p. 461.

This section says in effect that if a miner complies with the requirements the United States will grant him absolutely a piece of earth bounded at the surface by straight lines distinctly marked, and by planes extending through such lines to the center of the earth, and that he should have all lodes of mineral-bearing rock whose apexes or lodes are within such boundaries.

Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 59.

12. EXTENT OF SURFACE OWNERSHIP AND POSSESSION.

Possession of the surface of a mining claim is possession of a vein or lode having its apex within such surface lines, although the vein in its downward extension may pass beyond the vertical side lines of the claim, and will enable the person in possession to maintain trespass for the removal of ore from such vein beneath the surface of an adjoining claim.

Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430, p. 435.

Montana Min. Co. v. St. Louis Min., etc., Co., 147 Fed. 897, p. 913.

Pardee v. Murray, 4 Mont. 234.

The locator of a mining claim is not confined as to the question of the discovery of ore to the point where the alleged openings or workings were made, as the statute expressly gives him the exclusive right of possession and enjoyment of all the surface included within the limits of his location, and of any veins or lodes having their tops or apices within his surface lines.

Cheesman v. Shreeve, 40 Fed. 787, p. 791.

Under this section locators own everything lying perpendicularly under the surface excepting veins apexing outside of the surface lines.

Baillie v. Larson, 138 Fed. 177, p. 178.

This section clothes the owner of the surface and the apex with the exclusive right of possession and enjoyment of both, including the right to follow the vein to its utmost depth; and he is deemed to be in possession of all parts of the vein to which he is entitled, though it departs beyond his side lines; and he commits no wrong and is not a trespasser when he follows it outside of his side lines.

Montana Ore Purchasing Co. v. Boston & Montana Copper, etc., Min. Co., 27 Mont. 536, p. 542.

13. SURFACE POSSESSION PROTECTED—PRIORITY OF RIGHTS.

A person who first makes a valid location of a mining claim and takes possession thereof acquires such a title as the laws of the United States recognize, and will protect as against intruders.

Fulkerson v. Chisna Min., etc., Co., 122 Fed. 782, p. 785.

See Parley's Park Silver Min. Co. v. Kerr, 130 U. S. 256.

Under this section the locator of a lode claim is protected in his possession and possessory right to the claim, and to the lode or vein having its apex within his surface lines.

Waterloo Min. Co. v. Doe, 17 L. D. 111, p. 112.

The rights which a valid location of a mining claim secures to the locator and his grantees or successors are clearly defined by law and are wholly unaffected by any subsequent conflicting locations, as in all such matters the first in time is the first in right.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 583.

The possessory title of a locator as the equitable owner, if prior in time, is superior in title to that of any other claimant.

Reed v. Munn, 148 Fed. 737, p. 757.

The possession of a vein recognized by the mining laws and to which protection is given is by one who holds the surface at the apex of such vein, and the location of a vein or lode upon its apex or surface will not be defeated by any secret underground working and possession by parties having no right to the surface.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 148.

See Eilers v. Boatman, 3 Utah 159.

14. RIGHT TO MAINTAIN OR DEFEND POSSESSION.

A locator in the actual possession of a valid mining location may maintain such possession and exclude every other person from trespassing thereon, and no one has the right to forcibly disturb his possession or forcibly enter upon his premises.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 83.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 134 Fed. 268, p. 271.

See Aurora Hill Min. Co. v. Eighty-five Min. Co., 34 Fed. 515.

Stranger Lode, In re, 28 L. D. 321, p. 324.

Hustler & New Year Lode Claims, In re, 29 L. D. 668, p. 671.

Rader v. Allen, 27 Oreg. 344.

The possessor of a mining claim or a purchaser holding a certificate is an owner in the sense that he may resist an unlawful possessor or a stranger to the paramount source of title from following the dip of a vein into his claim.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 937.

Duggan v. Davey, 4 Dak. 110, disapproving Montana Co. v. Clark, 42 Fed. 626.

A lode location perfected according to law and recorded in the proper county, and not abandoned or forfeited in any way, is a title that a locator or his grantees may hold and defend against any person or claimant by a subsequently acquired title.

Mantle v. Noyes, 5 Mont. 274, p. 292.

The possession of the surface ground of a mining claim is sufficient evidence of title as against any one not showing any higher or better right thereto.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 668.

If a locator's interest in mining ground is in the nature of a grant, and he has such a legal title as will support ejectment, and is entitled to the exclusive right of possession and enjoyment of the surface ground, he is legally authorized to maintain that possession by proper action.

Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 451.

In a contest as to the right of possession of a vein having its apex in a particular mining location, the defendant may show any fact which disproves the allegation of ownership and the right of possession.

Colorado Central, etc., Min. Co. v. Turck, 50 Fed. 888, p. 892.

The statute having armed the locator with a complete grant of the possession, he alone is concerned for its protection and may maintain a suit to that end, but he can not ask the Government to bring an action for a trespass which is alone against his individual right of possession.

Smith, *In re*, 1 L. D. 615, p. 616.

Without a patent, for the purpose of attack and defense, the locator is the owner, and his assignee or grantee is protected by the registration statutes of a State against any equitable interest not of record and unknown at the time of the transfer.

Reed v. Munn, 148 Fed. 737, p. 757.

See *Forbes v. Gracey*, 94 U. S. 762.

Belk v. Meagher, 104 U. S. 279, p. 283.

Manuel v. Wulff, 152 U. S. 505, p. 511.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.

Bakersfield, etc., Oil Co. v. Kern County, 144 Cal. 148.

Kendall v. San Juan Min., etc., Co., 9 Colo. 349, p. 357.

Roseville Alta Min. Co. v. Iowa Gulch Min. Co., 15 Colo. 29.

McFeters v. Pierson, 15 Colo. 201.

Butte Hardware Co. v. Frank, 25 Mont. 344.

Under the provisions of this section, as well as the provisions of sections 2324 and 2325, a party to a suit involving title or the right of possession to a mining claim can not recover unless he shows compliance with the statutes, both State and Federal, and also the miners' rules and regulations in force relating to the location of mining claims.

Becker v. Pugh, 9 Colo. 589, p. 590.

Hunt v. Eureka Gulch Min. Co., 14 Colo. 451, p. 456.

Evidence which is competent and sufficient for a patent for a mining claim as against the Government is competent and sufficient to maintain the party complying with the statute in his possession and claim against a stranger trespassing upon his possession and claim.

North Noonday Min. Co. v. Orient Min. Co., 11 Fed. 125, p. 127.

15. NATURE OF LOCATION AS PROPERTY.

A perfected mining location held by mere possessory title is property, and may be sold, transferred, mortgaged, and inherited.

Forbes v. Gracey, 94 U. S. 762, p. 767.

Belk v. Meagher, 104 U. S. 279, p. 283.

Gwillim v. Donnellan, 115 U. S. 45, p. 49.

Noyes v. Mantle, 127 U. S. 348, p. 353.

Sullivan v. Iron Silver Min. Co. 143 U. S. 431, p. 434.

Manuel v. Wulff, 152 U. S. 505, p. 510.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 226.

Bradford v. Morrison, 212 U. S. 389, p. 394.

Black v. Elkhorn Min. Co., 52 Fed. 859, p. 860.

Migeon v. Montana Central R. Co., 77 Fed. 249, p. 254.

Bonner v. Meikle, 82 Fed. 697, p. 699.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 109.

O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 854, p. 855.

Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 97.

McNeil v. Pace, 3 L. D. 267, p. 270.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 100.

Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401, p. 405.

Smith, *In re*, 9 C. L. O. 164; 1 L. D. 615.

Chief Moses Indian Reservation, *In re*, 9 C. L. O. 189.

Tyee Consolidated Min. Co. v. Langstedt, 1 Alaska 439.

Copper River Min. Co. v. McClelland, 2 Alaska 134, p. 143.

Cascaden v. Dunbar, 2 Alaska 408, p. 412; 157 Fed. 62.

Van Ness v. Rooney, 160 Cal. 131, p. 136.

Suessenbach v. First National Bank, 5 Dak. 477, p. 497.

Ah Kle v. McLean, 3 Idaho 538, p. 544.
 Mantle v. Noyes, 5 Mont. 274, p. 292.
 Butte Hardware Co. v. Frank, 25 Mont. 344, p. 349.
 Cobban v. Mesagher, 42 Mont. 399, p. 408.
 Poore v. Kaufman, 44 Mont. 248, p. 257.
 South End Min. Co. v. Tinney, 22 Nev. 19, p. 33.
 Golden v. Murphy, 31 Nev. 395, p. 418.
 Baxter Mountain Gold Min. Co. v. Patterson, 3 N. Mex. 179, p. 183.
 McCarthy v. Speed, 11 S. Dak. 362, p. 370.
 McCarthy v. Speed, 12 S. Dak. 7, p. 9.
 See Coleman v. McKenzie, 28 L. D. 348, p. 349.
 Fort Maginnis, In re, 1 L. D. 552.
 McQuillan v. Tanana Electric Co., 3 Alaska 110, p. 117.
 Windmuller v. Clarkson, 2 Alaska 298, p. 299.
 Goller v. Fett, 30 Cal. 481.
 Garthe v. Hart, 73 Cal. 541.
 Moore v. Hammerstag, 109 Cal. 122.
 McPeters v. Pierson, 15 Colo. 201, p. 204.
 Tibbitts v. Ah Tong, 4 Mont. 536, p. 546.
 Hopkins v. Noyes, 4 Mont. 550.

The exclusive right of possession and enjoyment given to the holder of a mining claim by this section is property.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 550.
 Affirmed in Black v. Elkhorn Min. Co., 163 U. S. 445.

The title of a locator of a mining claim is property that can be sold, transferred, and mortgaged, and is also capable of being inherited, without infringing the title of the United States.

Bradford v. Morrison, 212 U. S. 389, p. 395.
 Bradford v. Morrison, 10 Ariz. 214, p. 215.
 See Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471.
 Keeler v. Trueman, 15 Colo. 143.

The ownership of mining claims held by mere possessory title is governed by well-defined codes of laws, and may be sold, transferred, mortgaged, inherited, and taxed as other property.

Forbes v. Gracey, 94 U. S. 762, p. 767.
 O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 109.
 Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 563.

The possessory right to a mining claim is property which may be sold on execution and may be the subject of sale, mortgage, and lease, but it is not community property.

Phoenix Min., etc., Co. v. Scott, 20 Wash. 48, p. 51.
 See Black v. Elkhorn Min. Co. 163 U. S. 445.
 Contra, Jacobson v. Bunker Hill, etc., Min., etc., Co., 2 Idaho 863.

The possession or the possessory title of a mining claim given under this section is as valuable as the estate granted by the patent, as under either the locator may lawfully take out and appropriate all the valuable ores and mineral therein—all there is of value in the estate.

Forbes v. Gracey, 9 Fed. Cas. 401, p. 404.

The title to the fee is in the Government, but the interest of the miner may be conveyed and inherited.

Elder v. Horseshoe Min., etc., Co., 194 U. S. 248, p. 256.
 Black v. Elkhorn Min. Co., 163 U. S. 445, p. 449.

The rights given to locators of mining claims under this section amount to property capable of being enjoyed or transferred, and subject to all the ordinary rules governing the enjoyment of other property. It is the duty of a locator of a mining claim to protect his claim against trespasses, and if he fails to do so the Government will not assume the burden of protecting his interest; and the United States is not injured by the cutting and use of the timber on his claim, and the law does not impose upon the

Government the duty of intervening to protect his private property acquired by virtue of his location.

Smith, In re, 9 C. L. O. 146.

Smith, In re, 9 C. L. O. 164.

If a mining claim has been properly located the owner may sell any part without prejudice to his right to hold the remainder, and he may dispose of it by gift or grant in any way that seems proper to him.

Little Pittsburg Consol. Min. Co. v. Amie Min. Co., 17 Fed. 57, p. 58.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 414.

The possessory right of the locator of a mining claim, though property of value which may be sold, transferred, mortgaged, and inherited, or forfeited by abandonment, constitutes no legal interest or estate in the property as against the United States or its grantees, whose title can be burdened by the right of dower or otherwise by virtue of State legislation.

Black v. Elkhorn Min. Co., 52 Fed. 859, p. 861.

The rights of a person entering upon the public domain and locating and working a mineral claim are of as high order as those of a settler, as such rights properly initiated may ripen into the right to the final patent.

Southern Calif. R. Co. v. O'Donnell, 3 Cal. App. 382, p. 385.

16. MINING LOCATION AS REAL PROPERTY.

The term "real property" includes mining claims.

Bradford v. Morrison, 212 U. S. 389, p. 395.

While a mining claim can not be classified under any of the heads used to describe real or personal property, yet in the western region, where mining for precious metal exists, a mining claim is considered as real property, as an interest in land, and is sold and conveyed by deed, and actions for the recovery of possession of real estate, to quiet title, and for trespass apply to it.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 552.

See Harris v. Equator Min., etc., Co., 8 Fed. 863.

Houtz v. Gisborn, 1 Utah 173.

Merritt v. Judd, 14 Cal. 59.

Hopkins v. Noyes, 4 Mont. 550.

Lavagnino v. Uhlig, 26 Utah 1.

The right or title given the locator of a mining claim under this section, no matter what its quality or force, is wholly legal, and while certain equities may arise, yet they grow out of the original location of the mining claim.

Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 460.

A tenant in common of a mining claim who reserves on partition a portion of the claim on which the original discovery was located will not lose his interest in the claim if the vein or lode exists and has been developed and worked through the whole length of the claim.

Silver City Gold, etc., Min. Co. v. Lowry, 19 Utah 334, p. 349.

17. SALE AND TRANSFER OF CLAIMS—STATUTE OF FRAUDS.

The exclusive right of possession and enjoyment conferred by this section upon the locator of a mining claim is in the nature of a legislative grant of an interest in land, and this interest can not be transferred by parol or otherwise than in accordance with the statute of frauds.

Moore v. Hammerstag, 109 Cal. 122, p. 123.

Reagan v. McKibben, 11 S. Dak. 270, p. 277.

According to the doctrine of the Supreme Courts of the United States, of the State of California, and of the State of Montana, a written conveyance is not necessary to the transfer of a mining claim, but a transfer of possession is sufficient.

Mining Co. v. Taylor, 100 U. S. 37, p. 42.

Table Mountain Tunnel Co. v. Stranahan, 20 Cal. 198.

Hopkins v. Noyes, 4 Mont. 550, p. 559.

See Patterson v. Keystone Min. Co., 30 Cal. 360.

Goller v. Fett, 30 Cal. 482.

Omar v. Soper, 11 Colo. 380, p. 389.

Contra, Cascaden v. Dunbar, 2 Alaska 408, p. 412.

The Supreme Court of the State of California has more recently held, impliedly overruling its former holding, that the possessory title to a mining claim is real estate and can be transferred only by deed.

Hardenbergh v. Bacon, 33 Cal. 381.

See Moore v. Hammerstag, 109 Cal. 122, p. 123.

An oral agreement to locate a mine for the benefit of another or others is not within the statute of frauds.

Eberle v. Carmichael, 8 N. Mex. 169, p. 177.

See Book v. Justice Min. Co., 58 Fed. 106.

Cascaden v. Dunbar, 2 Alaska 408, p. 414.

Elliott v. Elliott, 3 Alaska 352, p. 365.

Gore v. McBrayer, 18 Cal. 582.

Moritz v. Lavelle, 77 Cal. 10.

Murley v. Ennis, 2 Colo. 300.

Hibour v. Reeding, 3 Mont. 13.

Welland v. Huber, 8 Nev. 203.

Reagan v. McKibben, 11 S. Dak. 270, p. 277.

18. TITLE ACQUIRED BY POSSESSION—STATUTE OF LIMITATIONS.

A purchaser in possession of a mining claim is in by color of title, which, under the statute of limitations, may ripen into a perfect right, and as against other locators it will be presumed that the original location was regular.

Harris v. Equator Min., etc., Co., 8 Fed. 863, p. 865.

In order to acquire a title to a mining claim under the statute of limitations, the possession of the claimant must be open, notorious, exclusive, and continuous during the statutory period, and not a loose, uncertain, scrambling, and mixed possession.

Hamilton v. Southern Nevada Gold, etc., Min. Co., 33 Fed. 562, p. 566.

This section is applicable to lode mining claims, and where possession of such claim has continued for the statutory period it is equivalent to a location under the laws of Congress.

Belk v. Meagher, 104 U. S. 279, p. 287.

Harris v. Equator Min., etc., Co., 8 Fed. 863.

Altoona Min. Co. v. Integral Min. Co., 114 Cal. 100.

Lavagnino v. Uhlig, 26 Utah 1 p. 25.

See Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159.

A locator in actual occupancy of a mining claim who has been evicted by a wrongdoer is not required to give evidence of every fact necessary to a valid location in an action to recover possession, as under long possession a presumption of a valid location arises.

Harris v. Equator Min., etc., Co., 8 Fed. 863, p. 865.

A mining claim is a possessory right and is real estate under the statute of Utah, and any right to a mining claim not asserted within seven years, where such claim has been in the continuous possession of another, is barred by the statute of Utah.

Lavagnino v. Uhlig, 26 Utah 1, pp. 24, 25.

See Harris v. Equator Min., etc., Co. 8 Fed. 863.

Aspen Min., etc., Co. v. Rucker, 28 Fed. 220.

See *Hughes v. Devlin*, 23 Cal. 501, p. 506.
Roseville Alta Min. Co. v. Iowa Gulch Min. Co., 15 Colo. 29.
McFeters v. Pierson, 15 Colo. 201.

19. RIGHTS OF HEIRS AND ASSIGNS.

By the express provision of the statute the locator, his heirs, and assigns have certain rights in a claim, and it provides for a conveyance thereof to the grantee to the same extent that such rights were possessed by the grantor.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 452.
O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106.

The locator of a mining claim acquires under it an exclusive right of possession which he can transmit to his heirs and assigns, and which possession continues so long as the laws are complied with.

Forbes v. Gracey, 9 Fed. Cas. 401, p. 404.
Keller v. Trueman, 15 Colo. 143, p. 145.

Where an exclusive right to dig and appropriate ores is given it passes to the heirs and assigns of the grantee, and this right extends throughout the entire depth of the mine or vein; it then resembles a case where a grantee receives the title to coal in place.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 551.

This section does not purport to grant a fee simple estate or any title whatever, but relates to the right of possession only, and it grants nothing to the heirs except the right to inherit; they can inherit only the identical interests and rights which were vested in the deceased ancestor during his lifetime, and his heirs are not designated as a class entitled to a vested exclusive right to acquire the title to mining property from the Government, as such a right would be incompatible with the locator's right of alienation and incompatible with the rights of the several States to tax mining claims and enforce payment by sale.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 110.

The possessory right of a mining claim held by a person at the time of his death descends to his lawful heirs, but the legal title to the property remains vested in the United States.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 107.
Affirmed in O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 854.

All the rights granted by this section are fully vested in the locator and are his property during his lifetime; such rights on his death become a part of the assets of his estate, which his administrator can sell and dispose of, and in which his heirs as against such administrator have no legal or equitable rights.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 111.
O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 854 (affirmed).

By this section locators or their heirs or assigns are given the exclusive right of possession and enjoyment of the surface within their location lines so long as they comply with the statutory requirements.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 430.

This and other sections of the mining law which provide for the acquisition of the title to mining claim by patents contain no provisions similar to the provisions of other laws giving to widows and children of deceased discoverers and locators preferred rights to obtain patents.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 111.

The simple right to dig and carry away ores is an entire thing and can not be divided so as to have the same shared by several under the original claimant or proprietor.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 551.

20. LOCATOR NOT REQUIRED TO PURCHASE OR OBTAIN PATENT.

The right given to possess, explore, and extract minerals from a located mining claim is not dependent upon an application to purchase the property.

Black v. Elkhorn Min. Co., 52 Fed. 859, p. 860.

If a locator applies for a patent and is met with obstacles not anticipated he may relinquish his attempt to secure such patent and hold his claim by right of possession.

Branagan v. Dulaney, 2 L. D. 744, p. 751.

Black Queen Lode v. Excelsior No. 1 Lode, 22 L. D. 343, p. 344.

McGowan v. Alps Consol. Min. Co., 23 L. D. 113, p. 115.

Peoria & Colorado Min., etc., Co. v. Turner, 20 Colo. App. 474, p. 482.

Beals v. Cone, 27 Colo. 473, p. 482.

Miller v. Hamley, 31 Colo. 495, p. 501.

See Chilberg v. Consol. Min. Co., 3 Alaska 235, p. 241.

Nome & Sinook Co. v. Townsite of Nome, 34 L. D. 276.

The right of possession given by this section is as complete as if the locator had a Government patent, provided he continues to put each year the required amount of labor or improvement thereon; and in lieu of this he may apply for a patent, and having complied with the conditions he receives a title and is thus absolved from doing further work on the claim.

Branagan v. Dulaney, 2 L. D. 744, p. 751.

Miller v. Hamley, 31 Colo. 495, p. 501.

21. LOCATIONS CAN NOT BE SET APART FOR PUBLIC USE.

Land occupied and taken as a valid existing mining claim is, under the mining laws, appropriated to a specific purpose, and can not, while the mining rights exist, be set apart by the Executive for public uses, and can not be included within the limits of an Indian reservation.

Chief Moses Indian Reservation, In re, 9 C. L. O. 189.

Where the possessory rights to a mining claim are full and complete previous to the establishment of a military reservation, the inclusion of such claim within the limits of a reservation is without authority of law and can not legally divest the locator of his rights or of the further right, on compliance with the statute, to acquire title to the land.

Fort Maginnis, In re, 1 L. D. 552, p. 554.

G. OWNERSHIP OF VEINS.

1. APPLICATION OF SECTION TO VEINS.
2. EXTENT AND LIMITATIONS ON OWNERSHIP.
3. OWNERSHIP DEPENDENT ON POSITION OF APEX.
4. PRESUMPTION AS TO OWNERSHIP OF VEIN.
5. PRESUMPTION OF OWNERSHIP OVERCOME BY PROOF.
6. OWNERSHIP OF VEINS AT POINT OF INTERSECTION—RIGHT OF WAY.

1. APPLICATION OF SECTION TO VEINS.

This section treats of veins, lodes, and ledges the top or apex of which lies inside of the surface lines extended vertically downward.

Gregory v. Pershbaker, 73 Cal. 109, p. 114.

The intent of the mining law is that the locator is to have the vein or lode when he has the apex.

Fitzgerald v. Clark, 17 Mont. 100, p. 117.

By this section Congress intended to give the locator of a mining claim, to which no adverse rights had attached, every vein apexing within the surface boundaries of his location.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 15.

It is the clear design of the law that the lineal ownership of a ledge shall be the same under as upon the surface.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 108 Fed. 189, p. 194.

See Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 88.

The property given by this section in all lodes having their tops or apices in the territory described in the patent, whether the same lie transversely or collateral to the principal lode on which the location was made, is limited by other sections of the act.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222, p. 224.

A lode, vein, or ledge containing a valuable mineral deposit is by this section distinguished from the ground in which it is found.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 49.

2. EXTENT AND LIMITATIONS ON OWNERSHIP.

Under the statute of 1866 a patent could issue but for one vein only, while the statute of 1872 gives to all locations, all veins and lodes, the tops or apices of which lie inside the surface lines.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 305.

When a mining location properly made is perfected under the law, the lode of vein becomes the property of the locator, and the Government holds the title in trust for him.

Yard, In re, 38 L. D. 59, p. 64.

See Noyes v. Mantle, 127 U. S. 348.

St. Louis Min., etc., Co. v. Montana Min. Co., 171 U. S. 650.

Brown v. Gurney, 201 U. S. 184.

Farrell v. Lockhart, 210 U. S. 142.

Bradford v. Morrison, 212 U. S. 389.

A vein or lode having its apex within the side lines of a location is the property of the person locating the claim, though it is a vein or lode independent of the vein or lode originally located within the surface lines of the claim.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 670.

The exclusive right of possession given to the locator by the statute is not limited to the surface nor even to the single vein whose discovery is the basis of the location; but it extends to all veins and lodes throughout their entire depth the top or apex of which lies inside of the surface lines of the location extended downward vertically.

St. Louis Min. Co. v. Montana Min. Co., 194 U. S. 235, p. 237.

St. Louis Min. Co. v. Montana Min. Co., 171 U. S. 650, p. 665.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499.

Clipper Min. Co. v. Eli Min. Co., 194 U. S. 220, p. 227.

North Noonday Min. Co. v. Orient, etc., Min. Co., 1 Fed. 522.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 557.

Wilhelm v. Silvester, 101 Cal. 358.

Bullion, Beck, etc., Min. Co. v. Eureka Min. Co., 5 Utah 55.

See Rose v. Richmond Min. Co., 17 Nev. 25.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 49.

On the issuance of a patent for a mining claim a patentee becomes entitled not only to such lodes and veins as had been previously located, but to all other veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of his surface lines extended downward vertically.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 663.

The owner of a prior location is entitled to all veins or minerals within the lines of his location, whether they be side veins, cross veins or spurs, or whether they lie transversely to the main vein or are collateral thereto, provided that the tops or apices thereof are found within the surface lines of the senior location.

Branagan v. Dulaney, 8 Colo. 408, p. 413.

See *Calhoun Gold Min. Co. v. Ajax Gold Min. Co.*, 27 Colo. 1.

Those portions of a vein on its dip inside of the vertical planes of the surface lines of the location are controlled by the general provisions of this section.

King v. Amy & Silversmith Consol. Min. Co., 9 Mont. 543, p. 573.

A vein or lode claim, whatever its nature, character, or extent, is limited to the survey of the surface location, and the title to such vein or lode upon its strike is not given to any portion thereof which departs beyond the surface line of the location.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

See *Iron Silver Min. Co. v. Elgin Min. Co.*, 118 U. S. 196.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

McCormick v. Varnes, 2 Utah 355.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 21.

There is no difference in the nature of the rights by which the locator of a valid lode claim holds the veins or lodes embraced by the surface lines extended vertically downward, and such of the veins or lodes as extend in their downward course outside of its side lines, and that as to the latter no adverse rights can be acquired which could not be acquired with respect to the former.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 586.

In a contest over the ownership of a vein or lode the contest must be settled in favor of the party within the planes of whose end lines drawn vertically downward the disputed ground lies.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Where a lode claim conflicts with the location lines of a prior valid claim and the ground within the conflicting lines is excluded, the applicant has no right to the excluded ground, and no right to any vein or lode having its apex in such excluded ground, but his right terminates where the lode in its downward course intersects the exterior boundary of such excluded ground, and the end lines of his location can not be established beyond such intersection.

Hustler & New Year Lode Claims, In re, 29 L. D. 668, p. 670.

Chambers, In re, 14 C. L. O. 162.

3. OWNERSHIP DEPENDENT ON POSITION OF APEX.

The question of the ownership of a vein or lode depends upon whether the top and apex of such vein is in one place or another.

Stevens v. Gill, 23 Fed. Cas. 12, p. 13.

See *Stevens v. Williams*, 23 Fed. Cas. 40.

The priority of right to a single broad vein or lode vested in the locator is not determined by the dates of the entries or patents of the respective claims, and priority of discovery may be shown by proof other than the entries and patents.

Lawson v. United States, 207 U. S. 1, p. 19.

The custom of miners has been to treat a vein as a unit and indivisible in point of width and as belonging to the discoverer.

Lawson v. United States Min. Co., 207 U. S. 1, p. 14.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478, p. 484.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3.

See *United States Min. Co. v. Lawson*, 134 Fed. 769, p. 774.

The owner of a mining claim has no title to any part of a vein or lode which has its top or apex within the surface lines of another location, and can not enjoin the owner of such location from working such vein on its dip within the side lines of his claim.

Montana Co. v. Clark, 42 Fed. 626, p. 630.

The owner of a mining claim has no title or interest in veins or lodes within the surface lines of his location extended downward vertically which have their tops or apexes within the surface lines of other mining claims.

Roxanna Gold Min., etc., Co. v. Cone, 100 Fed. 168.

If a vein apexing within the surface lines of a particular location forms or divides in its downward dip and passes out through the side lines of the location so that the outcrop of one of such forks is on an adjoining claim, then the entire fork belongs to the owner of the latter claim.

Colorado Central Consol. Min. Co. v. Turck, 50 Fed. 888, p. 896.

See Colorado Central Consol. Min. Co. v. Turck, 54 Fed. 262, p. 265.

Colorado Central Consol. Min. Co. v. Turck, 70 Fed. 294.

4. PRESUMPTION AS TO OWNERSHIP OF VEIN.

In the absence of evidence as to the course or strike of a discovery vein a court will assume that the surface location was made along the course of the vein, and that the lines cross the discovery vein and become the end lines for all veins having their apexes within the surface boundaries of the location.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 741.

See Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499.

Work Min., etc., Co. v. Dr. Jack Pot Min. Co., 194 Fed. 620.

Ajax Gold Min. Co. v. Hilkey, 31 Colo. 131.

The owner is regarded as having the sole right to all that is found within the lines of his location until another shall show a clear title thereto, as a part of some vein or lode having its top or apex in other territory, as there is a presumption of ownership in every locator as to the territory covered by his location.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 938.

Wakeman v. Norton, 24 Colo. 192, p. 196.

Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas. 98.

See Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.

King v. Amy & Silversmith, etc., Min. Co., 152 U. S. 222.

Consolidated Wyoming Min. Co. v. Champion Min. Co., 63 Fed. 540.

Iron Silver Min. Co. v. Campbell, 17 Colo. 267.

Duggan v. Davey, 4 Dak. 110.

Parrot Silver & Copper Min. Co. v. Heinze, 25 Mont. 139, p. 147.

Maloney v. King, 25 Mont. 188, p. 192.

The presumption in favor of the holder of a patent for a lode mining claim is in favor of the right of possession and enjoyment of all the surface included within the lines of his location, and of all veins or ledges throughout their entire depth having their tops or apices inside of such surface lines.

Original Consol. Min. Co. v. Abbott, 167 Fed. 681, p. 683.

See Maloney v. King, 27 Mont. 428.

The owner of a mining claim is prima facie the owner of a vein or lode found at a depth of 1,300 feet within the vertical planes of the lines of his own claim, and this presumption will prevail until it is shown that the vein had its outcrop in the surface of some other located claim in such a way as to give the owner of the latter the right to pursue it on its downward course.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 508.

Saint Louis Min., etc., Co. v. Montana Min. Co., 194 U. S. 235, p. 239.

Doe v. Waterloo Min. Co., 54 Fed. 935.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540.
 Saint Louis Min., etc., Co. v. Montana Min. Co., 113 Fed. 900, p. 902.
 See Lebanon Min. Co. v. Republican Min. Co., 6 Colo. 371.
 Kirk v. Meldrum, 28 Colo. 453, p. 457.
 Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139.
 State v. District Court, 25 Mont. 504.

Prima facie all ore bodies lying beneath the surface of a mining claim is the property of the owner of such claim.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 418.

See Cheesman v. Shreeve, 37 Fed. 36.

Blue Bird Min. Co. v. Murray, 9 Mont. 468.

Notwithstanding the extralateral rights given by this section, the presumption is that all ore bodies found within the surface lines of another location belong to such location.

Grand Central Min. Co. v. Mammoth, 29 Utah 490, p. 550.

There is a presumption of ownership in every locator as to the territory covered by his location, and within his own lines he shall be regarded as the owner of all valuable deposits until another shall show by preponderance of testimony that such deposits belong to another lode having its top or apex elsewhere.

Grand Central Min. Co. v. Mammoth, 29 Utah 490, p. 551.

Where a ledge has been traced for a great distance in a claim, it is not an unreasonable presumption that it will continue in the same direction far enough to cross the end line of the claim.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 602.

Proof of possession of a mining claim is prima facie evidence of title and is presumptive of the ownership declared on and until overcome by evidence of a superior character is sufficient to maintain the action.

Lebanon Min. Co. v. Consolidated Republican Min. Co., 6 Colo. 371, p. 381.

Sears v. Taylor, 4 Colo. 38.

Patchen v. Kelley, 19 Nev. 404, p. 413.

5. PRESUMPTION OF OWNERSHIP OVERCOME BY PROOF.

The presumption of ownership in the locator of all within his location lines throughout the entire depth prevails until it is shown that the veins or lodes within the planes of his lines extended downward vertically have their tops or apices in the surface of some other valid location in such a way as to give the owner of the latter location the right to pursue them on their downward course.

Saint Louis Min., etc., Co. v. Montana Min. Co., 194 U. S. 235, p. 239.

Doe v. Waterloo Min. Co., 54 Fed. 935.

Consolidated Wyoming, etc., Min. Co. v. Champion Min. Co., 63 Fed. 540.

Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139.

The presumption as to ownership of all beneath the surface, including minerals, may be overcome by proof showing that such mineral is a part of a vein or lode apexing in a claim belonging to another, but this is always a matter of defense.

Lawson v. United States Min. Co. 207, U. S. 1, p. 8.

The burden of proof is upon the party claiming ore bodies within the limits of another valid claim to overcome the presumption of ownership arising from the possession of such ore bodies, and to show by a preponderance of evidence that the apex and the strike of the vein are within the vertical planes of his own surface location and that between planes drawn vertically downward through the end lines of his location and a certain parallel line the vein from its apex on its dip is continuous, and that

the continuity extended to and through the adjoining claim in controversy, and that the ore bodies, the subject of the controversy, form a part of such vein.

Grand Central Min. Co. v. Mammoth, 29 Utah 490, p. 551.

See Doe v. Waterloo Min. Co., 54 Fed. 935.

Consolidated Wyoming Min. Co. v. Champion Min. Co., 63 Fed. 540.

Pennsylvania Consol. Min. Co. v. Grass Valley Exp. Co., 117 Fed. 509.

Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas. 98.

Iron Silver Min. Co. v. Campbell, 17 Colo. 267.

6. OWNERSHIP OF VEINS AT POINT OF INTERSECTION—RIGHT OF WAY.

The right of possession and the priority in location granted by this section give to the locator all minerals contained within the space of intersection, where any vein apexing within his surface lines, crosses, in its downward course, any vein apexing in any other subsequent location; and in case of a union of the veins at such point, then he is entitled to the vein below such point of union.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 501.

The title to minerals at the point of intersection must be determined by this and section 2336 of the Revised Statutes.

Gillis v. Stinchfield, 159 U. S. 658, p. 659.

There is no repugnance between this section and section 2336, nor is this section repealed by implication or otherwise by section 2336, but the two sections construed together completely define and make easy of ascertainment the rights of miners to the two different classes of lodes or veins; and they are easily applicable to any conditions that may arise, and they eliminate all perplexing questions that tend and attempt to identify, define, and isolate lodes.

Watervale Min. Co., v. Leach, 4 Ariz. 34, p. 60.

There are cases where the owners of ledges which intersect may each have rights entirely distinct from, and which do not conflict at all with, the clear and positive language of this section.

Wilhelm v. Silvester, 101 Cal. 358, p. 361.

When a junior mining location crosses a senior location and the veins therein are cross veins, the junior locator is entitled to all the ore found on his vein within the side lines of the senior location, except at the space of intersection of the two veins.

Branagan v. Dulaney, 8 Colo. 408, p. 413.

Lee v. Stahl, 9 Colo. 208, p. 210.

Morgensen v. Middlesex Min., etc., Co., 11 Colo. 176, p. 178.

Overruled Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1.

The owner of a claim on land adjoining that of a prior locator has a right to follow his ledge as it dips laterally underneath the surface of such prior locator; and if the ledge intersects the ledge of the prior locator, the right of way through it is given by this section, the senior locator merely having the mineral at the point of intersection, and to such an intersection the provision of section 2336 can readily be applied in perfect consistency with the provisions of this section.

Wilhelm v. Silvester, 101 Cal. 358, p. 362.

The supreme court of California does not follow the supreme court of Colorado, but follows the supreme court of Arizona, on the proposition that this section is utterly inconsistent with section 2336 R. S. and is impliedly overruled by the later section in the order of arrangement.

Wilhelm v. Silvester, 101 Cal. 358, p. 363.

Branagan v. Dulaney, 8 Colo. 408.

See Watervale Min. Co. v. Leach, 4 Ariz. 34.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222.

H. EXTRALATERAL RIGHTS.

1. NATURE AND EXTENT.
2. EXTRALATERAL RIGHTS FIXED BY STATUTE.
3. EXTRALATERAL RIGHTS SUPERIOR TO POSSESSORY RIGHTS.
4. EXTRALATERAL RIGHTS DEPEND ON POSITION OF APEX.
5. LOCATION MUST BE ON APEX.
6. LOCATION MUST BE LENGTHWISE OF VEIN TO SECURE RIGHTS.
7. SURFACE LOCATION CONTROLS EXTRALATERAL RIGHTS—LIMITATIONS.
8. EXTRALATERAL RIGHTS CONFINED TO DIP OF VEIN.
9. DIP AND DOWNWARD COURSE OF VEIN—MEANING.
10. LIMITATIONS ON RIGHTS TO FOLLOW DIP OF VEIN.
11. NO RIGHT TO FOLLOW VEIN ON STRIKE.
12. EFFECT WHERE VEIN PASSES THROUGH SIDE LINE.
13. IRREGULAR OR CROSS LOCATIONS—EFFECT.
14. GOVERNED BY LOCATION OF END LINES.
 - a. DIRECTION OF END LINES.
 - b. PROPER LOCATION OF END LINES.
 - c. END LINES ADJUSTABLE.
 - d. LIMITED BY VERTICAL PLANES OF END LINES.
 - e. VEIN NOT REQUIRED TO EXTEND FROM END LINE TO END LINE.
 - f. END LINES OF ALL VEINS WITHIN LOCATION.
 - g. PARALLELISM OF END LINES.
 - h. SIDE LINES MAY BE END LINES.
 - i. PRESUMPTION AS TO SIDE LINES AFTER PATENT.
15. IDENTITY AND CONTINUITY OF VEIN.
 - a. IDENTITY OF VEIN.
 - b. CONTINUITY OF VEIN ESSENTIAL.
 - c. WANT OF IDENTITY AND CONTINUITY—EFFECT.
16. VEIN EXTENDING INTO PLACER CLAIM—EFFECT.
17. VEIN EXTENDING INTO AGRICULTURAL LAND—EFFECT.
18. BURDEN OF PROOF IN ASSERTING EXTRALATERAL RIGHTS.
19. CONFLICT OF RIGHTS—PREFERENCE IN SENIOR LOCATOR.
20. EXTRALATERAL RIGHTS OF JUNIOR LOCATOR.
21. RELATIVE RIGHTS OF LOCATORS TO FOLLOW VEIN.
22. EFFECT AND RIGHTS WHERE LINES ARE LAID ON EXISTING LOCATIONS.
23. CONFLICTING EXTRALATERAL RIGHTS—DETERMINATION.
24. USE OF SURFACE OF ADJOINING CLAIMS.
25. EXTRALATERAL RIGHTS NOT AFFECTED BY PATENT.

1. NATURE AND EXTENT.

This section gives the locator of a mining claim extralateral rights.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 43 (dissenting opinion).

The extralateral right conferred by the statute is an incident of a valid lode location, and the right is expressly given by statute to locators of all mining locations.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 937.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 663.

The doctrine of extralateral rights granted by this section can not be applied to intralimital rights.

Jefferson Min. Co. v. Anchoria-Leland Min., etc., Co., 32 Colo. 176, p. 190.

The extralateral rights of this section are not limited entirely to a single location, but may refer to extralateral rights arising out of a number of consolidated locations.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 662.

Where the owner of a vein follows it into an adjoining claim he does so by permission of a positive law, without which he would have no more right to go upon his neighbor's claim below than upon the surface, and this right is in the nature of an easement or servitude laid upon the adjoining mining claim.

Mount Diablo, etc., Min. Co. v. Callison, 5 Sawy. 439, p. 456.

As to all veins that come to the surface and have anything like a vertical position in the earth, the ownership of the outcrop will carry anything that may be found below in the same vein or lode however much it may depart from the territory described in the location.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222, p. 223.

The extralateral rights given by virtue of possession to the owner of the surface of the mining claim is constructive and outside the downward vertical planes of the surface lines and must give way to the actual adverse possession of the third person.

Golden Cycle Min. Co. v. Christmas Gold Min. Co., 204 Fed. 939, p. 941.

It is only a locator or his successor who has the right to follow a vein into the boundaries of an adjoining owner, and such adjoining owner, holding under a location or patent is prima facie entitled to everything beneath his surface, and he may assert such prima facie title to prevent intrusion by any one who can not show that he comes with the right acquired by compliance with this statute.

Parrot Silver, etc., Min. Co. v. Heinze, 25 Mont. 139, p. 148.

Denying Montana Co. v. Clark, 42 Fed. 626.

2. EXTRALATERAL RIGHTS FIXED BY STATUTE.

The right of lateral pursuit is a right conferred by statute and does not depend on circumstances, and is as absolute as the ownership of a vein apexing within the surface lines, ceasing only when it interferes with the statutory rights of another, but the right is not limited to cases where the entire vein is within the claim.

St. Louis Min., etc., Co. v. Montana Min. Co., 104 Fed. 664, p. 668.

The design of this statute is to grant to the original locator a section of the lode within vertical planes drawn downward through the lines marked on the surface; but as the vein might deviate from a perpendicular and pass out of the side lines, the statute confers the right to follow it outside of such side lines, but within planes through the end lines drawn vertically downward and continued in their own direction.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 205.

King v. Amy & Silversmith Consol. Min. Co., 9 Mont. 543, p. 567.

Fitzgerald v. Clark, 17 Mont. 100, p. 116.

Butte & Boston Min. Co. v. Societe, etc., de Lexington, 23 Mont. 177, p. 193.

See *Harper v. Hill*, 159 Cal. 250, p. 257.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 63.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 77 (dissenting opinion).

The difficulty arising from this section grows out of its application to the claims where the course of a vein is so variant from a straight line that the end lines of a surface location are not parallel, or, if so, they are not at right angles to the course of the vein, and this question will often occur where the lines of the surface location are made to control the direction of the vertical planes. The remedy must be found in carefully making the location and in postponing the marking of its boundaries until explorations can be made to ascertain the course of the vein.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 206.

Mining Co. v. Tarbet, 98 U. S. 463, p. 469.

Argentine Min. Co. v. Terrible, etc., Min. Co., 122 U. S. 478, p. 485.

Fitzgerald v. Clark, 17 Mont. 100, p. 115.

See *King v. Amy & Silversmith Consol. Min. Co.*, 9 Mont. 543, p. 563.

Where a location of a mining claim is made so that the vein crosses it from end line to end line at right angles, there is nothing in the statute to interpret.

Fitzgerald v. Clark, 17 Mont. 100, p. 115.

Extralateral rights apply only to what may be found beneath the surface within the limits fixed by these statutes and never operate to increase or diminish surface rights.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 420.

See *Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co.*, 131 Fed. 591, p. 605.

The intent of the law is that the locator of a mining claim shall have the right to the vein throughout its entire depth if the apex lies within his surface lines, although the vein on its dip downward departs from the perpendicular so as to extend outside the side lines; but if such side line is called an end line then the whole intent of the statute is destroyed.

Fitzgerald v. Clark, 17 Mont. 100, p. 129.

The construction by the Land Department of the right of the locator of a mining claim to follow a vein or lode on its dip beyond the side lines of his claim is indicated by the stipulations inserted in the grants to the effect "that the premises hereby conveyed, without exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting or removing the ore from such other vein, lode, ledge, or deposit."

Montana Co. v. Clark, 42 Fed. 626, p. 629.

3. EXTRALATERAL RIGHTS SUPERIOR TO POSSESSORY RIGHTS.

The enlargement of the common-law possessory right by this section is extended only to a mining claim located in the manner provided by law, and the exercise of this right operates to the abridgment of the possession of every tenement penetrated or intersected by a vein or lodé having its apex in a superior tenement.

Richmond Silver Min. Co. v. Davy, 10 C. L. O. 291.

The limitation of this section operates indirectly and by virtue of the grant to another locator to pursue a vein apexing within his surface line on its dip downward through some side line into the ground embraced within the patent. It, in effect, withdraws from the location only such veins as others own and have a right to pursue.

St. Louis Min. Co. v. Montana Min. Co., 194 U. S. 235, p. 238.

In an action to quiet title to a mining claim the fact that a vein or lode having its apex in a separate and distinct claim owned by the defendant may, on its downward course, pass through the vertical side lines of plaintiff's claim has no relation to surface rights, as such vein or lode would be the property of the defendant under this section without regard to the plaintiff's surface ownership.

Bulwer Consol. Min. Co. v. Standard Consol. Min. Co., 83 Cal. 589, p. 598.

One claimant holds his possession subject to the same rights in others and is therefore liable to have his land entered by an adjoining proprietor pursuing his vein in its course beyond his own side lines, otherwise he may challenge the right of any intruder within the lines of his claim.

Duggan v. Davey, 4 Dak. 110, pp. 119, 122.

The grant to the locator by this section includes the surface and the veins apexing within the boundaries of his location; but until, by entry and patent, the equitable title to the ground passes to the locator, he can not question any rights of exploration which are granted by other provisions of the statute, as the fee remains in the Government until a patent is issued.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 343.

A person entering a mining claim of another held by a certificate of purchase from the Government must show a valid location of another claim, as the law entitles him to follow any vein or lode having its apex within his surface lines outside of his side lines extended vertically downward, and that any acts of mining committed by him were upon such vein or lode, and which lies between vertical planes drawn through the end lines continued in their own direction.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 939.

The purchaser of a lode claim takes it subject to the provisions of the statute reserving to locators of other mining claims the right to follow, and take ore under its surface, any vein, lode, or ledge having its top or apex within the surface lines of such other location.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 937.

Land adjoining a mining claim duly located is sold subject to the right of the owner of such claim to follow the dip of his vein into such adjoining land and extract the ore therefrom, and this condition is inserted in patents for lode claims and is a protection for such rights granted under this section.

Gilmer (John T.), In re, *Sickels Min. L. & D.*, 252.

4. EXTRALATERAL RIGHTS DEPEND UPON POSITION OF APEX.

The exclusive right of possession and enjoyment to a vein or lode under this section is one whose apex is found inside of the surface lines extended vertically; and this right follows such vein or lode downward even though it may depart from a perpendicular and extend laterally outside of the vertical side lines of such surface location.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 533.

King v. Amy & Silversmith Min. Co., 152 U. S. 222, p. 227.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 448.

Montana Co. v. Clark, 42 Fed. 626, p. 629.

Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430, p. 435.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 148.

Argonaut Consol. Min., etc., Co. v. Turner, 23 Colo. 400, p. 405.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 12.

Gilpin v. Sierra Nevada, etc., Min. Co., 2 Idaho 662, p. 674.

Fitzgerald v. Clark, 17 Mont. 100, p. 122.

See *Parrot Silver, etc., Min. Co. v. Heinze*, 25 Mont. 139, p. 148.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 63.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 74 (dissenting opinion).

The locator of a mining claim is entitled to every vein whose apex lies within his surface lines, and he is entitled to them throughout their entire depth though they depart from a perpendicular in their course downward so as to extend outside his vertical side lines.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 88.
Iron Silver Min. Co. v. Cheesman, 8 Fed. 297, p. 300.
Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430, p. 434.
 See *Hustler and New Year Lode*, In re, 29 L. D. 668, p. 672.

If a vein has its top or apex within his surface lines, then a locator has the right to follow its dip in its course downward outside of the vertical side lines of his location until it comes to a vertical plane drawn downward through the end lines of his location extended in their own direction.

Walrath v. Champion Min. Co., 72 Fed. 978.
Gwillim v. Donnellan, 115 U. S. 45, p. 47.
Colorado Central Consol. Min. Co. v. Turck, 150 U. S. 138.
Elgin Min., etc., Co. v. Iron Silver Min. Co., 14 Fed. 377, p. 378.
Doe v. Waterloo Min. Co., 54 Fed. 935, p. 940.
Montana Ore Purchasing Co. v. Boston, etc., Silver Min. Co., 85 Fed. 867, p. 868.
Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222, p. 223.
Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 55.
Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147.
Davis v. Shepherd, 31 Colo. 141, p. 145.

The underground rights of a locator are based upon the fact that the apex of the vein is within his surface limits.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 851.

While proof of ownership of the apex may be proof of the ownership of a vein descending on its dip below the surface of property belonging to another, yet such ownership of the apex must first be established before any extralateral title to a vein can be recognized.

Lawson v. United States Min. Co., 207 U. S. 1, p. 8.
Keely v. Ophir Hill Consol. Min. Co., 169 Fed. 601, p. 604.

The question of ownership and right of possession of a vein or lode depends upon its location and the width of the apex, and in no sense upon the depth at which it passes outside of the side lines of the surface location.

Colorado Central Consol. Min. Co. v. Turck, 54 Fed. 262, p. 265.

The statute does not say that the vein must run from end to end of the location, but the locator has the right to follow all veins throughout their entire depth the top or apex of which lies inside of his surface lines, and on this fact all his underground rights are based.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 851.

In no case is the extralateral right of the locator of a mining claim bounded by either side line of his surface location, extended downward or otherwise, as to any vein, lode, or ledge having its top or apex within the surface lines of his location.

Walrath v. Champion Min. Co., 72 Fed. 978, p. 980.

The extralateral right to a vein or lode outcropping at the surface where it exists is fixed by the course of the vein or lode at the surface and not by its course on a level.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 588.

A person entering beneath the surface of the side lines of the mining location of another must justify under this section of the statute and show that he is the owner of a vein or lode the top or apex of which lies within the surface lines of his own claim.

Cheesman v. Shreeve, 37 Fed. 36.

5. LOCATION MUST BE ON APEX.

The apex of a vein must be the top or terminal edge of the vein on the surface or the nearest point to the surface, and it must be the top of the vein proper rather than of a spur or feeder, and it is the point from which the vein has a dip as well as a strike or course; otherwise it confers no extralateral rights.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 737.
See Gilpin v. Sierra Nevada Consol. Min. Co., 2 Idaho 662.

The apex is the highest point in the vein.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 737.
See Mining Co. v. Tarbet, 98 U. S. 469.

Del Monte, etc., Min. Co. v. Last Chance Min. Co., 171 U. S. 55.
Duggan v. Davey, 4 Dak. 110.

Slight deviations of the outcropping lode from the location of a claim will probably not affect the right of the locator to appropriate the continuous vein; but if it makes a material departure from his location, and runs off in a different direction without returning, the location can not be said to be on that lode or vein farther than it continues substantially to correspond with it.

Mining Co. v. Tarbet, 98 U. S. 463, p. 469.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 54.

6. LOCATION MUST BE LENGTHWISE OF VEIN TO SECURE RIGHTS.

See sec. 2320, p. 53.

In the location of a mining claim the presumption is that the vein runs lengthwise and not crosswise of the claim as located.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 115.
Work Min., etc., Co. v. Doctor Jack Pot Min. Co., 194 Fed. 620.

The intent of the statute of 1866, and of 1872 alike, is that mining locations on lodes or veins shall be made lengthwise on the surface of the earth where they are discoverable, and the end lines are to cross the lode and to extend perpendicularly downward, and gives the right to follow the dip outside of the side lines; but it was not the intent of the law to permit a person to make the location crosswise of a vein so that the side lines should cross it, and thereby give him the right to follow the strike of the vein outside of his side lines. A failure to make such location subordinates the rights of the locator to that of others who have property located on the lode.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 303.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 24.

This section establishes a rule by which every claim shall be so many feet of the vein lengthwise of its course to any depth below the surface, though its dip may carry it ever so far from the perpendicular.

Mining Co. v. Tarbet, 98 U. S. 463, p. 469.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 308.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 90.

Mining locations on lodes or veins must be made lengthwise and in the general direction of the vein or lode on the surface where they are discoverable, and the end lines are to cross the lode and extend vertically downward, and the right to follow the dip outside of the side lines is based upon the hypothesis that the direction of such lines corresponds substantially with the course of the vein or lode at its apex.

Johnson, In re, 7 C. L. O. 35.

Flagstaff Silver Min. Co. v. Tarbet (Utah, 1878).

Under the statute a lode location must be substantially a parallelogram.

Johnson, In re, 7 C. L. O. 35, p. 36.

A location can not be made on the middle part of a vein or lode, or otherwise than at the top or apex, which will authorize the locator to follow such vein or lode beyond his lines.

Iron Silver Min. Co. v. Murphy, 3 Fed. 368, p. 372.

The statute gives to the locator of any lode claim the length of 1,500 feet along the vein, and it has been the custom to obtain this extent by locating across and over an intersecting claim; but in asserting the right of length the intersecting claim, of course, is excluded.

Cheesman v. Hart, 42 Fed. 98, p. 101.

The right of a location is in no respect made dependent upon the course of a vein beyond the limits fixed by the statute, and a location so made and marked as required by statute or by the valid local rules and regulations of the mining districts confers upon the locator and his assigns and successors the rights defined by this section.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 583.

The statute establishes a rule by which each claim shall be so many feet of the vein lengthwise of its course to any depth below the surface, though laterally its inclination shall carry it ever so far from the perpendicular. The Spanish mining law confined the locator to perpendicular lines on every side, but gave him greater or less width according to the dip of the vein.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 304.

Johnson, In re, 7 C. L. O. 35.

Flagstaff Silver Min. Co. v. Tarbet (Utah, 1878).

7. SURFACE LOCATION CONTROLS EXTRALATERAL RIGHTS—LIMITATIONS.

Ownership and possession of the surface of a lode mining claim is the possession of such lode to the full extent of the extralateral right of the owner of the claim.

Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 121 Fed. 973, p. 976.

Where the true owner of a mining claim is in possession of its surface asserting title to the entire claim, his possession in legal contemplation extends to everything which is part of such claim, whether vertically beneath its surface or within the extralateral right granted by the statute in the actual possession of another holding adversely.

United States Min. Co. v. Lawson, 134 Fed. 769, p. 772.

See *Montana Min. Co. v. St. Louis Min., etc., Co.*, 102 Fed. 430.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 121 Fed. 973.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 583.

Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147.

The rights granted to locators of lode mining claims with respect to veins, lodes, and ledges found within the limits of their locations relate to the veins, lodes, and ledges having their tops or apexes within the surface lines of the locations extended downward vertically and to no other, and these rights are exclusive and follow such veins, lodes, and ledges throughout their entire depth within the vertical end lines, though they may depart from a perpendicular course downward and extend outside the vertical side lines of the locations.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 147.

The cases establish the following propositions under this section: First, the surface location determines the extent of the rights of the locator below the surface; second, the end lines place the limits beyond which the locator may not go in the appropriation of any vein along its course or strike; third, every vein the top or apex of which

lies inside the surface lines extended downward vertically is the property of the locator, and he may pursue it to any depth beyond his vertical side lines; fourth, the end lines of the location do not establish the limits beyond which the locator may not go in following a vein, where it subsequently develops that the location has, in fact, been placed not lengthwise, but crosswise, of the vein, as the side lines then become the end lines, and those which he calls end lines are in fact side lines.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 89.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 307.

The surface side lines extended downward vertically determine the extent of the claim of the locator, except where the vein passes outside of such surface lines; but it must lie between vertical planes drawn downward through the end lines of the surface location.

King v. Amy & Silversmith Min. Co., 152 U. S. 222, p. 228.

The doctrine that the owner of the surface owns all beneath until it is shown to belong to another applies to mining claims only when there is doubt as to what apex an underground body of ore may belong.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 106 Fed. 471, p. 474.

8. EXTRALATERAL RIGHTS CONFINED TO DIP OF VEIN.

The intent of the statutory grant of this section is that the miner may follow his vein on the dip, but not on the strike, if it departs beyond the sides of his location.

King v. Amy & Silversmith Min. Co., 9 Mont. 543, p. 567.

See *Catron v. Old*, 23 Colo. 433, p. 437.

The extralateral rights awarded by this section must in all cases be pursued upon the dip rather than the strike of the vein that is more upon the downward than upon the onward course of the vein.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 738.

See *Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co.*, 131 Fed. 579.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538.

This section does not limit the right of a locator to follow a vein or lode having its apex within his surface boundary lines in its dip through his side lines into the adjoining claim of a junior locator.

Colorado Central Consol. Min. Co. v. Turck, 50 Fed. 888, p. 894.

See *Collins v. Bailey*, 22 Colo. App. 149, p. 164.

Heinze v. Boston & Montana Min. Co., 30 Mont. 484, p. 485.

By this act Congress provides that whenever a location shall be made upon a lode according to local laws the locator is entitled to the surface ground to a certain extent on each side of the top or apex of the vein or lode, that he shall have not only the lode but all others which have their tops or apices in the ground covered by his location, and these he may follow on their dip or inclination to any depth to which they may extend. This rule applies to all lodes which have an inclination below the plane of the horizon.

Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas. 98, p. 100.

The owner of a mining claim is entitled to extralateral rights where his vein on its dip and downward course passes entirely through one or two or more adjoining claims, if its identity is not destroyed; and in determining the identity and continuity of a vein under such circumstances a fault and a vein may be parts of one and the same fissure.

National Mines Co. v. Charleston Hill National Min. Syndicate, 205 Fed. 787, p. 791.

It is not essential to the right of the locator to follow the vein in its dip downward that the vein or lode should extend in its length the entire distance from one end to the other of the location.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 292.

A mistake of the locator in the length of his location will not defeat his right to follow a vein on its dip outside of his location.

Del Monte Min., etc., Co. v. New York, etc., Min. Co., 66 Fed. 212, p. 214.

By the Spanish mining law the owner of a mine was confined to perpendicular lines on every side, but it gave him greater or less width according to the dip of the vein.

Mining Co. v. Tarbet, 98 U. S. 463, p. 468.

Helvetia Lode, In re, Copp's Min. Lands 276.

See Rockwell's Spanish and American Law 56, and 274.

The purpose of this statute is that the ends of locations shall be bounded by vertical planes, but at the sides they may follow the dip of the vein even though they extend under the surface of other locations.

Empire, etc., Min. Co. v. Tombstone, etc., Min. Co., 100 Fed. 910, p. 913.

9. DIP AND DOWNWARD COURSE OF VEIN—MEANING.

The downward course of a vein is that direction which it takes underneath the surface on its downward course between vertical planes drawn through the end lines, and this gives a segment in length, throughout the depth, within vertical planes drawn through the parallel cross lines, equal to the length of apex covered by the surface boundaries, measured on lines on the plane of the vein.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 739.

See Duggan v. Davey, 4 Dak. 110.

Gilpin v. Sierra Nevada Consol. Min. Co., 2 Idaho 662.

The words "downward course" and "course downward" are used interchangeably, and it was undoubtedly intended by the use of the words to signify the course of the vein from the surface toward the center of the earth; and it may be perpendicular, or there may be a deflection in the downward course of a vein, and such deflection is called the dip, and when the vein reaches the horizontal it is then called a blanket vein or lode, and on such a vein a locator has no extralateral rights.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 737.

10. LIMITATIONS ON RIGHTS TO FOLLOW DIP OF VEIN.

The right to follow the dip outside of the side lines is based on the hypothesis that the direction of these lines corresponds substantially with the course of the lode or vein at its apex at the surface.

Mining Co. v. Tarbet, 98 U. S. 463, p. 467.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478, p. 485.

Helvetia Lode, In re, Copp's Min. Lands 276.

See Duggan v. Davey, 4 Dak. 110, p. 143.

Fitzgerald v. Clark, 17 Mont. 100, p. 115.

On the discovery of a vein of ore of sufficient value to justify the expenditure of time, labor, and money to open and develop the same the prospector is legally entitled to the fruits of his labor, but he will be limited in the length of his lode upon its strike to such portion as is within the surface lines of his location, but he will not be deprived of his extralateral rights as to the depth of such vein upon its dip the apex of which is within the surface lines of his location.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 549.

Harper v. Hill, 159 Cal. 250, p. 257.

The right given by this section to follow the dip of a vein where it departs from the perpendicular and passes through the side lines into an adjoining claim is not affected or limited by the fact that the vein has an inclination of 45 degrees or less from the perpendicular, but the right remains if the vein departs in any degree up to the horizontal plane, as it is still a departure from the perpendicular until it comes to a right angle from the perpendicular.

Stevens v. Williams, 23 Fed. Cas. 44, p. 46.

11. NO RIGHT TO FOLLOW VEIN ON STRIKE.

There can be no extralateral rights on the strike of a vein.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 739.

See *Argentine Min. Co. v. Terrible Min. Co.*, 122 U. S. 478.

Colorado Central Consol. Min. Co. v. Turck, 50 Fed. 888.

Larned v. Jenkins, 113 Fed. 634.

Tombstone Min. Co. v. Way Up Min. Co., 1 Ariz. 426.

Southern Nevada Gold, etc., Min. Co. v. Holmes Min. Co., 27 Nev. 107.

McCormick v. Varnes, 2 Utah 355.

The extralateral rights to which a complainant is entitled does not permit it to follow the vein more upon its strike than upon its dip.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 596.

Under this statute the locator of a mining claim is given the right to follow his vein or lode on its dip only when such vein or lode dips substantially at right angles with the strike of the vein or lode, and he can not follow such vein or lode outside of his claim on the strike of the vein.

Tombstone Min. Co. v. Way Up Min. Co., 1 Ariz. 426, p. 462.

Under this section a locator can not go outside of any of his lines on the strike or course of any vein or lode, except under rights acquired by him prior to May 10, 1872, and saved to him under the provisions of the act of May 10, 1872 (17 Stat. 91).

Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 65.

See *Mining Co. v. Tarbet*, 98 U. S. 463.

Harper v. Hill, 159 Cal. 250, p. 257.

The right of a locator to follow the strike of a lode ceases at the point where the lode crosses the line of the location, and it is immaterial as to the validity of the location whether it crosses the side line or not.

Beik v. Nickerson, 29 L. D. 662, p. 665.

Where a lode departs from the apex into another claim and then bends and comes back to the claim from which it started, the first locator has no right to that part of the lode which passes on the apex into the other claim.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 71 (dissenting opinion).

See *Wolfley v. Lebanon Min. Co.*, 4 Colo. 112, p. 117.

Lebanon Min. Co. v. Rogers, 8 Colo. 34.

Rose v. Richmond Min. Co., 17 Nev. 25.

12. EFFECT WHERE VEIN PASSES THROUGH SIDE LINE.

If the side lines of a mining claim are substantially parallel with the vein or lode the locator is not deprived of the right to follow the vein on its downward dip because it crosses the side line before reaching an end line, but in such case his extralateral right will extend from the end at which the vein enters to the point at which it crosses the side line.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 548.

Del Monte Min., etc., Co. v. New York, etc., Min. Co., 66 Fed. 212, p. 215.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 850.

Fitzgerald v. Clark, 17 Mont. 100.

Parrot Silver & Copper Min. Co. v. Heinze, 25 Mont. 139, p. 144.

State v. District Court, etc., 25 Mont. 504, p. 514.

See Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 696.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557.

Republican Min. Co. v. Tyler Min. Co., 79 Fed. 733, p. 735.

The owner of a mining claim has the right to follow a vein or lode, the top or apex of which is within his surface lines, on its dip, not upon its strike, upon a vertical plane drawn downward parallel to the end line, at the point where the strike of the vein or lode ends—where the lode, in its lengthwise course, intersects the side lines of the claims.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 564.

See Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683.

If the apex of a vein crosses one end line and one side line of a lode mining claim as located thereon, the locator of such vein can follow it upon its dip beyond the vertical side line of his location.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 86.

Clark v. Fitzgerald, 171 U. S. 92, p. 93.

Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139, p. 144.

State v. District Court, etc., 25 Mont. 504, p. 514.

A locator has a right to follow a vein on its dip beyond the vertical side lines if it enters at an end line but terminates halfway across the end of his location. In such case it is a vein the apex of which lies inside of his surface lines extended vertically downward.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 89.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 18.

Where a vein or lode crosses the side line of a location without reaching the end line, as marked on the surface, the strike is terminated by the plane of such side line and the right to follow a vein on its dip is then terminated by a vertical plane parallel to the end lines drawn downward and which takes effect at the point where the apex intersects such side lines.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 292.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557.

Republican Min. Co. v. Tyler Min. Co., 79 Fed. 733, p. 735.

King v. Amy & Silversmith Min. Co., 9 Mont. 543.

Fitzgerald v. Clark, 17 Mont. 100, p. 119.

See Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540.

Del Monte Min., etc., Co. v. New York Min., etc., Co., 66 Fed. 212.

Montana Min. Co. v. St. Louis Min., etc., Co., 147 Fed. 897, p. 905.

Patterson v. Hitchcock, 3 Colo. 533.

Armstrong v. Lower, 6 Colo. 393, p. 399.

Armstrong v. Lower, 6 Colo. 581, p. 585.

Catron v. Old, 23 Colo. 433, p. 437.

Doe v. Sanger, 83 Colo. 203.

Golden Fleece, etc., Min. Co. v. Cable Consol., etc., Min. Co., 12 Nev. 312.

Bullion, Beck & Champion Min. Co. v. Eureka Min. Co., 5 Utah 3, p. 70 (dissenting opinion).

To permit a locator to establish at the point where the apex crosses the side line a vertical plane parallel to the plane of the end line cut by such apex and permit him to follow the vein on its dip between these two planes is not in violation of any provisions of the statute and gives the locator the rights which the statute intends he should have.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 851.

If a vein or lode having its apex within the lines of a location passes out through his side line extended vertically downward into another claim and again comes within such side line and is cut by the other end line, it gives such locator no right to that

part of the apex which is outside of his side line, though it is in fact cut by both end lines of his location.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 55.

See Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3.

While a court can not make new end lines, nor can it make a new location or in any way change the one made by the parties, yet a court can keep within the end lines fixed by the locator in respect to any extralateral rights without drawing any line, and may give the locator such extralateral rights with reference to the point where the vein or lode passes out through a side line.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.

Del Monte Min., etc., Co. v. New York Min., etc., Co., 66 Fed. 212.

Republican Min. Co. v. Tyler Min. Co., 79 Fed. 733, p. 736.

Harper v. Hill, 159 Cal. 250, p. 257.

See King v. Amy & Silversmith Min. Co., 9 Mont. 543, p. 573.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 63.

13. IRREGULAR OR CROSS LOCATIONS—EFFECT.

The law does not permit a claimant to make his location crosswise of a vein, and does not give him the right to follow the strike of the vein outside of his side lines. A claimant's rights on a claim so located are subordinate to the rights of those who have properly located on the lode, and he can not interfere with their right to follow the dip outside of their side lines, as his right to the lode only extends to so much thereof as his claim covers.

Mining Co. v. Tarbet, 98 U. S. 463, pp. 467, 468.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 293.

Empire, etc., Min. Co. v. Tombstone, etc., Min. Co., 100 Fed. 910, p. 913.

Cosmopolitan Min. Co. v. Foote, 101 Fed. 518, p. 521.

See Iron Silver Min. Co. v. Elgin Min., etc., Co., 118 U. S. 196.

King v. Amy & Silversmith, etc., Co., 152 U. S. 222, p. 228.

Del Monte Min. Co. v. Last Chance Min. Co., 171 U. S. 55.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 303.

Consolidated Wyoming, etc., Co. v. Champion Min. Co., 63 Fed. 540, p. 548.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 557.

Catron v. Old, 23 Colo. 433, p. 436.

Parrot Silver & Copper Min. Co. v. Heinze, 25 Mont. 139, p. 144.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 63.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 54.

An improper location will not permit a locator to interfere with those who, having properly located along the vein, are pursuing their right to follow the dip in a legal way. He can only work upon such location to the extent that he does not interfere with the rights of other proper locators; and this rule applies irrespective of the priority of the locations, but it depends upon the question as to what part of the vein the respective locations properly cover and appropriate.

Mining Co. v. Tarbet, 98 U. S. 463, p. 468.

Where subsequent developments show that a mining claim as located contains little of the apex of the vein claimed, and such vein does not cross either end line and does not run parallel to the side lines of the location, but enters a side line and departs from the location at the same side, the locator is not entitled to any extralateral rights based on the ownership of the apex vein of such vein.

Catron v. Old, 23 Colo. 433, p. 441.

This section did not intend to permit a locator to place his claim crosswise of a vein so that the side lines should cross it and thereby give him the right to follow the strike

of the vein outside of his side lines, as that would subvert the whole system sought to be established by the law.

Johnson, In re, 7 C. L. O. 35.

Flagstaff Silver Min. Co. v. Tarbet (Territory of Utah, June, 1878, unreported).

Neither this section nor section 2336 authorizes cross locations on the surface of mining claims.

Wilhelm v. Silvester, 101 Cal. 358, p. 367.

A mining location which on its face defeats the intent of the law is necessarily illegal, but must conform to the provisions of this section.

Helvetia Lode, In re, Copp's Min. Lands 276, p. 277.

A person locating a mining claim in the form of a triangle has no right under this section to follow the lode or vein on its downward dip through the side lines of his location into another's claim.

Montana Co. v. Clark, 42 Fed. 626, p. 628.

Price v. McIntosh, 1 Alaska 286, p. 291.

Catron v. Old, 23 Colo. 433, p. 439.

See Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.

Doe v. Sanger, 83 Cal. 203.

14. GOVERNED BY LOCATION OF END LINES.

a. DIRECTION OF END LINES.

The right to follow the dip of the vein is bounded by the end lines, and these must be crosswise of the general course of the vein at the surface.

Johnson, In re, 7 C. L. O. 35.

See Flagstaff Silver Min. Co. v. Tarbet (Territory of Utah, June, 1878, unreported).

The intent of this section is that the end lines or their extension shall cut the vein or lode at its extremities as located, and the locator is entitled to all of the vein between the end lines thus established.

Mason, In re, 8 C. L. O. 104.

The end lines alone define the extralateral rights, and these must be straight lines, neither broken nor curved.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 311.

The right of a locator to follow the dip of a vein or lode outside of his surface lines will be denied where the claim is without end lines to define and limit such right.

Elgin Min., etc., Co. v. Iron Silver Min. Co., 14 Fed. 377, p. 379.

b. PROPER LOCATION OF END LINES.

When a vein or lode passes out of a mining claim across a side line, such vein may be followed on its dip between the perpendicular plane drawn through the intersecting end line and another similar parallel plane passing through the point where the vein crosses such side line.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 602.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 560.

See Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540.

Del Monte Min., etc., Co. v. New York, etc., Min. Co., 66 Fed. 212.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 292.

Fitzgerald v. Clark, 17 Mont. 100.

When a vein or ledge enters an end line of a claim a parallel line will be supposed to exist or be judicially constructed at the point where such vein or ledge passes out of the claim whether it be a side or an end line.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 106 Fed. 471, p. 472.

A locator's right to a lode claim terminates where the lode in its strike intersects the exterior boundaries of the excluded ground, and the end lines of the survey should not be established beyond such point of intersection.

Correction Lode, In re, 15 L. D. 67, p. 68.

See Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.

C. END LINES ADJUSTABLE.

Parties may by agreement settle and determine the location of their end lines.

Richmond Min. Co. v. Eureka Min. Co., 103 U. S. 839, p. 846.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 309.

A boundary line agreed upon between conflicting claimants may determine the rights of the parties in the length on the lode as well as their extralateral rights.

Kennedy Min., etc., Co. v. Argonaut Min. Co., 189 U. S. 1, p. 7.

The end lines of a claim may be changed to comply with the United States statutes requiring the end lines to be parallel.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 560.

See Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683.

The end line may be drawn at the point where the lode terminates within the surface lines, or at the point where the apex of the lode crosses the side line of the surface location.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 292.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 560.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 547.

King v. Amy & Silversmith Min. Co., 9 Mont. 543.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312.

Kahn v. Old Telegraph Min. Co., 2 Utah 174.

See Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, pp. 688, 690.

Tyler Min. Co. v. Last Chance Min. Co., 90 Fed. 15, p. 17.

Doe v. Sanger, 83 Cal. 203.

Judge Hallett says that "as the law requires that a location shall be made along the course or strike of a vein at the surface of the earth, the end lines must of necessity be at right angles to the course, and whenever the course or strike can be ascertained, at the points where it passes from the location, end lines should be fixed at right angles thereto, without reference to the end lines laid in the location."

Elgin Min., etc., Co. v. Iron Silver Min. Co., 14 Fed. 377, p. 380.

The rule permitting the locator to follow the ledge along its course underground is limited by the vertical planes of the end lines, but this rule can not be followed when the apex of the ledge passes out of a side line before reaching the other end line, as this would give the locator more of the ledge underground than he has of the apex.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 851.

D. LIMITED BY VERTICAL PLANES OF END LINES.

The statute provides that the right of a locator to the possession of the outside part of any vein or lode having its apex within his surface location shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of his location so continued in their own direction that such claim will intersect such exterior parts of such vein.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 207.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 70.

Cheesman v. Shreeve, 40 Fed. 787, p. 792.

Cheesman v. Hart, 42 Fed. 98, p. 100.

Bluebird Min. Co. v. Largey, 49 Fed. 289, p. 291.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 291.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 565.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 546.
Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 134 Fed. 268, p. 272.

See *Waterloo Min. Co. v. Doe*, 82 Fed. 45, p. 50.

The right to follow the dip of the vein is bounded by the end lines of the claim, properly so called, and which lines are those which are crosswise of the general course of the vein on the surface.

Mining Co. v. Tarbet, 98 U. S. 463, p. 468.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 208.

See *South End Min. Co. v. Tinney*, 22 Nev. 19, p. 63.

While the discoverer or owner may follow his vein in its descent into another's territory beyond his own side lines, he can not do this beyond his end lines, and the vein beyond such end lines is subject to further discovery and appropriation.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478, p. 486.

Larkin v. Upton, 144 U. S. 19, pp. 21-23.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 148.

The end lines as marked on the surface by the locator, save when the end lines become side lines in contemplation of law, place the limits beyond which such locator may not go in the appropriation of any veins along their course or strike.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.

See *Hustler and New Year Lode*, In re, 29 L. D. 668, p. 672.

Fitzgerald v. Clark, 17 Mont. 100, p. 124.

Where the end lines of a mining claim are once fixed they bound the extralateral right to all the lodes that are thereafter found within the surface lines of the location, and the act of 1872 in granting all other veins within the surface lines of the claim as located did not create any new lines for such veins or authorize the courts to make any.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 557.

Walrath v. Champion Min. Co., 72 Fed. 978.

Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430, p. 434.

The locator of a mining claim may follow any vein apexing within his surface lines outside of his side lines into an adjacent location, but he must keep within the vertical planes of his end lines extended downward.

Wheeler v. Billings, 72 Fed. 301, p. 307.

While Congress may have contemplated that every location should be in the form of a parallelogram not exceeding 1,500 by 600 feet, yet the purpose of the statute was to permit the location in such a case as to secure not exceeding 1,500 feet of the length of a discovered vein; the locator may place his location lengthwise and cover the course of a vein, as his side lines are not required to be parallel, but the end lines are, and for the purpose of bounding the underground extralateral rights, and he may pursue the vein outside of his side lines, but the limits of his right are not to extend on the course of the vein beyond the end line projected downward.

Hidee Gold Min. Co., In re, 30 L. D. 420, p. 428.

Beyond the end lines of a location the vein or mineral can not be followed into adjoining ground, but beyond a side line it can be followed.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 62 Fed. 945, p. 947.

This section, to meet the geologic conditions in the tendency of veins to depart from a perpendicular on the downward course, authorizes a miner to follow the vein on its dip to an indefinite length outside of his side lines, if the apex is within his location, but does not permit him to cross the vertical planes of his end lines.

Butte & Boston Min. Co. v. Societe Anonyme des Mines de Lexing, 23 Mont. 177, p. 193.

It is not believed to be the intention of Congress to prohibit a locator of a quartz lode from following his vein with all its dips, angles, and variations along its course, not exceeding 1,500 feet and not beyond the end lines of his location, in whatever direction it runs, irrespective of the vertical side lines of the surface boundaries.

Golden Fleece Gold, etc., *Min. Co. v. Cable Consol. Gold, etc., Min. Co.*, 12 Nev. 312, p. 331.

e. VEIN NOT REQUIRED TO EXTEND FROM END LINE TO END LINE.

This section places a limit on the length of the vein beyond which the locator must not go, but it permits him to go outside the vertical side lines unless the vein in its course reaches the vertical planes of the end lines. The statute does not require that the vein either on or below the surface shall extend from end line to end line in order to give him the right to pursue it in its dip outside the vertical side lines, as the mere naming of the limits beyond which a grant can not go is not equivalent to saying that nothing which does not extend to such limits is granted.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, pp. 89, 91.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 851.

Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430, p. 434.

See *Hustler and New Year Lode, In re*, 29 L. D. 668, p. 672.

When a mining claim is located so that the vein passes through the two end lines, the locator can follow it on its dip indefinitely along its course for a distance equal to that between the two end lines, and regardless of the vertical planes of his side lines, and for a length along its course equal to the length of the apex within his surface lines, restricted only by vertically extended planes of his end lines.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 851.

f. END LINES OF ALL VEINS WITHIN LOCATION.

Where more than one vein apexes within the surface lines of a mining location it would be physically impossible for the end lines to be drawn at right angles to the courses of all such veins, and the extralateral rights conferred by the statute exist without regard to the angle at which the end line crosses the general course of the vein.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 590.

See *South End Min. Co. v. Tinney*, 22 Nev. 19, p. 63.

The end lines of the original veins must be the end lines of all the veins found within the surface boundaries.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 308.

While the top or apex of more than one vein may lie within the surface lines of the location, and the veins may have different courses and dips, yet the right of the locator to follow them outside of the side lines of his location is bounded by the planes drawn vertically through the same end lines. The planes of the end lines can not be drawn at right angles to the courses of all the veins if they are not identical. In such case the end lines must be those which are crosswise of the general course of the vein on the surface.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 198.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 307.

See *South End Min. Co. v. Tinney*, 22 Nev. 19, p. 63.

A mining claim can have but two end lines and where such end lines are established they become the end lines for all veins found within the surface boundaries of the location.

St. Louis Min., etc., Co. v. Montana Min. Co., 184 Fed. 664, p. 667.

See *Iron Silver Min. Co. v. Elgin Min. Co.*, 118 U. S. 196, p. 207.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 307.

The end lines of a surface location must be considered by a court as the end lines of any and all other veins or lodes which lie inside of such surface lines, otherwise end lines would have to be constructed in different directions if the separate veins or lodes did not run parallel with each other, and the result would be that these lines extended might give to the owner of the claim a greater length along the lode as it extended downward than they have upon the surface.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 557.

Jefferson Min. Co. v. Anchoria-Leland Min., etc., Co., 32 Colo. 176, p. 187.

The statutory provision giving the original locator all the veins and lodes throughout their entire depth, the top or apex of which lies inside the surface lines, shows that the end lines marked on the ground must control. The right to follow such veins or lodes having their apex within his surface lines, outside of the side lines of the location, must be bounded by planes drawn vertically through the end lines. The planes of the end lines can not be drawn at a right angle to the course of all the veins if they are not identical.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 207.

Bluebird Min. Co. v. Largey, 49 Fed. 289, p. 291.

Where the top or apex of more than one vein lies within the surface lines of a location, and the veins have different courses or dips, then the right to follow them outside of the side lines must be bounded by planes drawn vertically through the same end lines, as the plane of the end lines can not be drawn at right angles to the courses of all the veins.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 208.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 558.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 590.

See South End Min. Co. v. Tinney, 22 Nev. 19, p. 63.

This section, among other things, gives the locator of a mining claim the right to follow all veins or lodes throughout their entire depth, the top or apex of which lies within his surface lines, limited by the vertical planes drawn downward through the end lines.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 7.

A locator may take more of a ledge underground than he owns of his apex, but this rule applies to secondary veins unknown at the time the location was made and constitutes no function in following the location lines on the surface, but in such case the end lines of all the original veins shall be the end lines of all veins found within the surface boundaries.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 108 Fed. 189, p. 194.

See Walrath v. Champion Min. Co., 171 U. S. 293.

The course of the primary or discovery vein definitely determines the end lines and side lines for all veins having their apexes within the exterior boundaries of the location.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 740.

See Cosmopolitan Min. Co. v. Foote, 101 Fed. 518.

G. PARALLELISM OF END LINES.

A locator is bound by the lines of his surface location and under the present statute it is essential to the existence of the right of the locator to follow his vein outside of the vertical planes drawn through the side lines that the end lines of his surface location be parallel.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 940.

See Mining Co. v. Tarbet, 98 U. S. 463.

Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.

The statute requires the end lines of a claim to be parallel, and a locator, in asserting a right to follow a vein on its dip without the side lines of his location and into the location of another, must show the outcrop or apex of such vein to be in his own location throughout the ground in controversy, being the extent of the location of the first locator, and of the location of that in which he attempts to follow such vein, parallel to each other.

Cheesman v. Shreeve, 40 Fed. 787, p. 791.

Cheesman v. Hart, 42 Fed. 98, p. 101.

See Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 277.

The parallel lines of a location crossing a vein are the end lines of the claim whether so intended by the locator at the time of its location or not.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 541.

Flagstaff Silver Min. Co. v. Tarbet, 98 U. S. 463.

Argentine Mine Co. v. Terrible Min. Co., 122 U. S. 478.

King v. Amy & Silversmith Min. Co., 152 U. S. 222.

Where the end lines of the location of a mining claim are not parallel the location may be valid for all that can be found within the surface lines, but in such case the locator can not claim the right to follow the vein or lode if it extends on its dip outside of the lines of his location.

Elgin Min., etc., Co. v. Iron Silver Min. Co., 14 Fed. 377, p. 381.

Where the end lines of a mining location are not parallel the owner of the claim has no extralateral rights.

Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139, p. 145.

Elgin Min., etc., Co. v. Iron Silver Min. Co., 14 Fed. 377, p. 379.

A portion of a side line can not properly be made an end line, as lodes and veins do not separately run in a tortuous manner.

Johnson, In re, 7 C. L. O. 35, p. 36.

Prior to the act of 1872 the end lines were not required to be parallel; and when it was decided that the requirements of that act made it a condition to the right of the locator to follow his vein outside of the vertical planes drawn through his side lines, the decision was limited in terms to cases where the location was made after the enactment of 1872.

East Central Eureka Min. Co. v. Central Eureka Min. Co., 204 U. S. 266, p. 269.

See Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196, p. 208.

h. SIDE LINES MAY BE END LINES.

If a location is laid across the lode or the course of its apex at or near the surface, then the side lines will become the end lines for the purpose of determining the rights of the owners.

Mining Co. v. Tarbet, 98 U. S. 463, p. 468.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.

Del Monte Min., etc., Co. v. Last Chance Min. Co., 171 U. S. 55.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, pp. 292, 293.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 546.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

Del Monte Min., etc., Co. v. New York, etc., Min. Co., 66 Fed. 212, p. 214.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848.

Tyler Min. Co. v. Sweeney, 79 Fed. 277.

Bonner v. Meikle, 82 Fed. 697, p. 705.

Empire Min. M. Co. v. Tombstone Min. Co., 100 Fed. 910.

Cosmopolitan Min. Co. v. Foote, 101 Fed. 518.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 589.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, pp. 601, 604.

Tombstone Min. Co. v. Way Up Min. Co., 1 Ariz. 426, p. 462.

- Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 61.
 Southern Calif. R. Co. v. O'Donnell, 3 Cal. App. 382, p. 386.
 Catron v. Old, 23 Colo. 433, p. 437.
 Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 739.
 Fitzgerald v. Clark, 17 Mont. 100, p. 124.
 Eilers v. Boatman, 3 Utah 159, p. 167.
 See Monarch of the North Claim, In re, Copp's Min. Lands 304, p. 306.
 Upton v. Larkin, 7 Mont. 449, p. 462.
 South End Min. Co. v. Tinney, 22 Nev. 19, p. 62.

Where a vein passes through both side lines of a lode claim into the ground of another claimant on its course or strike, then the side lines of such claim, with reference to the particular vein, become the end lines, and the rights of adjoining mining claimants are determined accordingly.

- King v. Amy & Silversmith Min. Co., 152 U. S. 222, p. 228.
 Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 696.
 Montana Ore Purchasing Co. v. Boston, etc., Silver Min. Co., 85 Fed. 867, p. 868.
 Argonaut Consol. Min. Co. v. Turner, 23 Colo. 400, p. 406.
 See Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139, p. 144.

A locator is not bound to lay his side lines perfectly parallel with the course or strike of the lode or vein so as to cover it exactly, and his location may so run that it crosses the vein; but in such event his end lines become his side lines, and he can only pursue his vein to his side lines vertically extended as though they were his end lines.

- Stevens v. Williams, 23 Fed. Cas. 40, p. 43.

The only exception to the rule that the end lines of a location as marked upon the surface of the ground establishes the limits beyond which he may not go in the appropriation of a vein on its course or strike is where it is developed that the location has been made across instead of along the course of the vein. In such case the law declares that what the locator called his side lines are his end lines.

- Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 89.
 Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430, p. 434.
 See Hustler and New Year Lode, In re, 29 L. D. 668, p. 672.

If the vein runs more nearly parallel with the end lines than with the side lines, as marked upon the ground, then the courts must consider the end lines of the location as the side lines and the extralateral rights are preserved and maintained.

- Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 549.
 Catron v. Old, 23 Colo. 433, p. 438.

Under this section the vein on its dip can not be followed outside of the vertical planes of the original side lines into an adjoining claim, where the claim is located across instead of along the vein or lode, as in such case the side lines must be treated as the end lines.

- Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 547.

Coincidence of lines between different claims does not necessarily make them side lines or end lines, but whether they shall be so regarded depends upon legal considerations.

- Walrath v. Champion Min. Co., 171 U. S. 293, p. 309.

The effect of the decisions where a mistake has been made in a mining location and where by legal effect side lines become end lines and the end lines side lines, is that the locator can not extend his boundaries beyond the new end lines, and this is regarded as a sufficient punishment on the party making the mistake.

- Empire, etc., Min. Co. v. Tombstone, etc., Min. Co., 100 Fed. 910, p. 914.
 Mining Co. v. Tarbet, 98 U. S. 463.
 Iron Silver Min. Co. v. Elgin Min., etc., Co., 118 U. S. 196.
 Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.
 King v. Amy & Silversmith Min. Co., 152 U. S. 222.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.
 Walrath v. Champion Min. Co., 171 U. S. 293.
 Cosmopolitan Min. Co. v. Foots, 101 Fed. 518, p. 521.

When the side lines of a mining claim become, by reason of the course of the vein, the end lines, then these new end lines determine the extralateral rights.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 740.

i. PRESUMPTION AS TO SIDE LINES AFTER PATENT.

The extralateral right given by the statute can not be defeated by showing the surface end lines of the original location of the claim were not parallel, where a patent has been issued showing the surface location and the parallelism of the end lines.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 940.

The legal presumption arises from the issuance of a patent that the end lines, as established on the ground, are the true lines for all the purposes of the case.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 741.

15. IDENTITY AND CONTINUITY OF VEIN.

a. IDENTITY OF VEIN.

The identity of a vein or lode is essential to the right of a locator to follow it outside of his surface lines extended downward vertically.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 534.

Collins v. Bailey, 22 Colo. App. 149, 163.

See Butte & Boston Min. Co. v. Société Anonyme des Mines de Lexington, 23 Mont. 177, p. 192.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 63.

A locator can not pursue a vein or lode outside of the side lines of his location, unless it is the same vein or lode which has its outcrop within his surface location; but such vein need not be a straight line of uniform dip or thickness or richness of mineral matter throughout its course and length.

Cheesman v. Shreeve, 40 Fed. 787, p. 793.

In determining the identity of ore bodies or the continuity of a vein or lode found on different levels, or where it is broken by the interjection of country rock, a wide latitude is permissible in order to ascertain the reasoning on which the conclusions of witnesses are based.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 557.

Book v. Justice Min. Co., 58 Fed. 106, pp. 111, 120, 126.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 83 Fed. 540, p. 544.

Overman Silver Min. Co. v. Corcoran, 15 Nev. 147, p. 153.

A locator is entitled to recover, in a case of controverted right to mineral, either where such mineral is within the surface lines of his location and patent, or is without such lines, by showing that it was a part of the same vein which his location and patent covered, and which, passing from his side lines, was a continuation of the vein within the lines of his location at the surface.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 531.

Collins v. Bailey, 22 Colo. App. 149, p. 163.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 63.

See Butte & Boston Min. Co. v. Société Anonyme des Mines de Lexington, 23 Mont. 177, p. 192.

b. CONTINUITY OF VEIN ESSENTIAL.

To give a locator the right to follow a vein or lode beyond the side lines of his claim he must show that the lode is continuous and in place throughout its whole course from its origin in his own location to the place in which he claims it.

Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas. 98, p. 99.

The presence of transverse veins or seams or spurs does not necessarily destroy the continuity of the main vein or defeat the right of the locator to follow such main vein where its apex is within the surface boundaries of his location.

Pennsylvania Consol. Min. Co. v. Grass Valley Exploration Co., 117 Fed. 509, p. 518.

The fact that the strike of a vein below the surface is in many places almost at right angles to its strike at the surface does not necessarily break the continuity of the vein, as such twisting or turning is accounted for by the folding of the rock under pressure and contraction as revealed by geological investigations.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597.

Pennsylvania Consol. Min. Co. v. Grass Valley Exploration Co., 117 Fed. 509, p. 525.

Proof that ore is found in the form of a brecciated vein in a fissure between walls may be sufficient to entitle a prior locator to follow such vein beyond the lines of his location.

Hyman v. Wheeler, 29 Fed. 347, p. 354.

If ore is found in a vein within boundaries of porphyry and lime, though some fragments of each may occur with it, the lode is well defined, but if the ore occurs in porphyry or lime, or in both, in such confused and irregular ways as shows no line of demarcation for the ore body, then the lode is not so well defined as that it may be followed beyond the lines of the plaintiff's location and the physical structure of the earth and within the location is to be considered.

Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas. 93, p. 100.

The fact that a mineral vein is strong or weak has no bearing on the question of the right of the prior locator to follow it beyond the side lines of his location.

Iron Silver Min. Co. v. Cheesman, 8 Fed. 297, p. 302.

See South End Min. Co. v. Tinney, 22 Nev. 19, p. 63.

The owner of a mining claim may follow a vein or lode having its top or apex within his surface lines on its dip into an adjoining claim, though such lode is not a true fissure, but consists of a line of contact between the porphyry and lime rock, if in its descent it contains some valuable ore, not necessarily of economical value for treatment, but something ascertainable, and the form in which it appears, if of no importance; but it will be sufficient, whether it be iron or manganese, carbonate of lead, or anything else yielding silver or showing the precious metals for which the location was made.

Stevens v. Gill, 23 Fed. Cas. 12, p. 13.

Collins v. Bailey, 22 Colo. App. 149, p. 162.

See Stevens v. Williams, 23 Fed. Cas. 40.

Stevens v. Williams, 23 Fed. Cas. 44, p. 47.

C. WANT OF IDENTITY AND CONTINUITY—EFFECT.

The absolute truth as to identity of ore bodies found on different levels at various depths is difficult to obtain, except where absolute continuity of vein matter is found, until expensive explorations are made, for the continuity of ore may be broken by the injection of country rock into the vein, or a 'horse' is found, which is not always easily distinguished from the actual walls of country rock.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 556.

In an action by the owner of a mining claim to determine the right to follow his apexing vein or lode through his side lines into another claim, the owner of the latter may show that such vein is not a separate and independent one, but is simply one of numerous ore channels which together form one broad lode having its apex within the surface lines of each claim, and which descending become united within the side lines of the latter claim.

Colorado Central Consol. Min. Co. v. Turck, 50 Fed. 888, p. 892.

See Colorado Central Consol. Min. Co. v. Turck, 54 Fed. 262, p. 265.

Colorado Central Consol. Min. Co. v. Turck, 70 Fed. 294.

A locator can not on the ground of priority of location follow mineral-bearing rock outside of the boundary lines of his claim, on the theory that it is a vein or lode, where the ore of the entire mountain in which his claim is located is distributed throughout the blue and brown limestones unequally, but nevertheless generally, and where the entire body of such blue and brown limestone is ore-bearing rock.

Hyman v. Wheeler, 29 Fed. 347, p. 354.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 942.

See *Eureka Consol. Min. Co. v. Richmond Min. Co.*, 8 Fed. Cas. 819.

Mammoth Min. Co. v. Grand Central Min. Co., 213 U. S. 72, p. 74.

Grand Central Min. Co. v. Mammoth Min. Co., 29 Utah 490.

If the owner of one claim is seeking to follow a vein or lode into another location the owner of the latter location may show that the vein or thing which is called a vein, and which such first locator is attempting to follow, is not in fact a mineral vein within the meaning of this statute, though marked and designated as such in the patent granting such claim to such first locator.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 552.

Stevens v. Williams, 23 Fed. Cas. 40.

16. VEIN EXTENDING INTO PLACER CLAIM—EFFECT.

A placer claim owned by one person may be entered by the proprietor of any veins or lodes of quartz or other rock in place bearing gold, silver, or other valuable deposits, for the purpose of mining and removing the ore, should they be found within the surface lines of such placer claim. This right is derived from this section of the statute giving the owner of any vein or lode the right of exclusive possession not only of the surface within the lines of his location, but also the right to follow the vein or lode if the top or apex lies inside of his surface lines.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, p. 380.

A lode claim ends at the point where the lode in its onward course or strike from the point of discovery intersects the exterior boundaries of a prior placer location.

Silver Queen Lode, In re, 16 L. D. 186.

See *Clipper Min. Co. v. Eli Min., etc., Co.*, 194 U. S. 220, p. 230.

Correction Lode, In re, 15 L. D. 67.

The rights conferred by a patent for a lode claim and a patent for a placer claim, and the conditions upon which they are held, are different.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 680.

17. VEIN EXTENDING INTO AGRICULTURAL LAND—EFFECT.

The owner of a mining claim in which a vein or lode has its apex is not entitled to follow such vein or lode on its dip across the boundaries of his own lands into the agricultural lands of an adjoining proprietor who has the older title.

Amador Median Gold Min. Co. v. South Spring Hill Gold Min. Co., 36 Fed. 668, p. 669.

18. BURDEN OF PROOF IN ASSERTING EXTRALATERAL RIGHTS.

The burden of proof is upon the owner of a mining claim where he seeks to follow a vein or lode on its downward dip outside of the side lines of his location to show that such vein or lode has its apex within the surface lines of his location.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 937.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 550.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 663.

See *Leadville Min. Co. v. Fitzgerald*, 15 Fed. Cas. 98.

Duggan v. Davey, 4 Dak. 110.

The burden of proof is upon a plaintiff to show affirmatively that he is entitled to a vein or lode claimed by him and the apex of which is within his surface lines.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 672.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 55.

To justify the subversion of the territory underlying the surface location of one claim by the owner of an adjoining claim, the burden is upon the latter to prove that a vein or lode of mineral ore has its outcrop or apex inside of the surface lines of his location, and that he reached the point of the alleged subversion by pursuing such vein from its outcrop or apex.

Cheesman v. Shreeve, 40 Fed. 787, p. 791.

A person claiming extralateral rights and seeking to take ore bodies from beneath the surface boundaries of another location must prove clearly and satisfactorily that he has the apex of the vein or lode within the surface boundaries of his location, and that he is pursuing the vein on its downward course.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 743.

See *St. Louis Min. Co. v. Montana Min. Co.*, 194 U. S. 235.

19. CONFLICT OF RIGHTS—PREFERENCE IN SENIOR LOCATOR.

The priority of a location determines the rights of the respective parties to follow a vein or lode into adjoining ground.

Jefferson Min. Co. v. Anchoria-Leland Min., etc., Co., 32 Colo. 176.

See *Last Chance Min. Co. v. Tyler Min. Co.*, 157 U. S. 683.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557.

Tyler Min. Co. v. Sweeney, 79 Fed. 277, p. 279.

In a controversy as to extralateral rights the older location is entitled to the entire width of the vein underground within its bounding planes.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 295.

Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. 848, p. 852.

Saint Louis Min., etc., Co. v. Montana Min. Co., 104 Fed. 664.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 419.

Last Chance Min. Co. v. Bunker Hill, etc., Min. etc., Co., 131 Fed. 579, p. 588.

Montana Min. Co. v. St. Louis Min., etc., Co., 183 Fed. 51, p. 69.

Where a vein has its apex partly in one claim and partly in another the senior location takes the entire width of the vein on its dip.

Lawson v. United States Min. Co., 207 U. S. 1, p. 12.

See *United States Min. Co. v. Lawson*, 134 Fed. 769, p. 774.

A senior location upon the surface apex of a vein or lode which is greater in width than the location itself takes the entire width of the vein underground and has the right to follow it on its dip from his own surface location with the bounding planes of his end lines.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 419.

See *St. Louis Min., etc., Co. v. Montana Min. Co.*, 104 Fed. 664.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 605.

Where two or more mining claims longitudinally bisect or divide the apex of a vein, the senior location takes the entire width of the vein on its dip, if it is in other respects so located as to give a right to pursue the vein downward outside of the side line, as it has been the custom among miners to treat the vein as a unit and indivisible in point of width as respects the right to pursue it extralaterally beneath the surface, and because the width of a vein is so irregular and its strike and dip depart so far from

right lines that it is impracticable to continue the longitudinal bisection at the apex throughout the vein on its dip or downward course, and because it conforms to the spirit of the mining laws that priority of discovery and location gives the better right.

United States Min. Co. v. Lawson, 134 Fed. 769, p. 774.

Affirmed in Lawson v. United States Min. Co., 207 U. S. 1, p. 12.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478, p. 484.

St. Louis Min. Co. v. Montana Min. Co., 104 Fed. 664.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 588.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591.

Montana Min. Co. v. St. Louis Min., etc., Co., 183 Fed. 51, p. 69.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3.

The person who holds the prior valid location is entitled to the ground comprised within his claim against all the world except the United States.

Meydenbauer v. Stevens, 78 Fed. 787, p. 793.

The law permits a senior locator to hold all the underground conflict between his extralateral rights and those of a junior locator, even where the older claim may be so irregularly located as to follow the ledge downward upon an oblique angle to its dip, and the junior location is so regularly made as to go down upon its true dip.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 134 Fed. 268, p. 273.

The statute does not permit a division of the crossing portion of a vein, hence an entire vein must be considered as apexing upon the senior location until it has wholly passed beyond its side lines.

St. Louis Min., etc., Co. v. Montana Min. Co., 104 Fed. 664, p. 669.

Montana Min. Co. v. St. Louis Min., etc., Co., 183 Fed. 51, p. 68.

A location along the line or apex of an outcrop or vein can not prevail as against a senior location on the dip of such vein.

Van Zandt v. Argentine Min. Co., 8 Fed. 725, p. 728.

20. EXTRALATERAL RIGHTS OF JUNIOR LOCATOR.

The rights of a junior locator below the surface are limited to the length of the vein within the surface of the territory patented to him.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 85.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 134 Fed. 268, p. 271.

Surface rights are limited by the statute to 300 feet in width on each side of the center of the vein or lode, yet such vein or lode may extend beyond such side lines, and where it does so extend another claim may be located thereon which will carry all surface rights subject to those of the older claims; and if the end-line planes of the two claims as thus located are not parallel, or do not coincide, then such junior locator may follow the vein on its dip downward between the planes of his own end lines where not included between the end-line planes of the senior location, and this right on the part of such junior locator prevails as against the right of any subsequent locator, though his lines are by consent laid partly upon the claim of the senior locator.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 420.

Overruling Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 106 Fed. 471.

See St. Louis Min., etc., Co. v. Montana Min. Co., 104 Fed. 664.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 605.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 134 Fed. 268, p. 273.

The owner of a lode mining claim may pursue his extralateral right to such vein or lode between his end-line planes produced, though the portion of such vein or lode within his surface boundaries is completely severed by the extralateral right of the owner of an older claim located on the same line, but whose end-line planes extended intersect both of those of the first-named owner, as his possession of the surface is in law the possession of such detached portion of the lode or vein.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 121 Fed. 973, p. 976.

Affirmed: Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 596.

21. RELATIVE RIGHTS OF LOCATORS TO FOLLOW VEIN.

The right of a locator or owner of a mining claim to follow the dip of a vein or lode apexing within his surface boundaries in its dip outside of his side lines does not depend upon the priority of location.

Colorado Central Consol. Min. Co. v. Turck, 50 Fed. 888, p. 895.

Jefferson Min. Co. v. Anchoria-Leland Min., etc., Co., 32 Colo. 176, p. 189.

See Colorado Central Consol. Min. Co. v. Turck, 54 Fed. 262, p. 266.

Colorado Central Consol. Min. Co. v. Turck, 70 Fed. 294.

The question of priority of location is of no practical importance as to the right of a locator to follow a vein or lode on its dip and is only important where the lines of one patent overlap those of another.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819; 4 Sawy. 302, p. 324.

22. EFFECT AND RIGHTS WHERE LINES ARE LAID ON EXISTING LOCATIONS.

The lines of a junior lode location may be laid within, upon, or across the surface of a valid senior location, for the purpose of securing to such junior location underground or extralateral rights not in conflict with any rights of the senior location.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, pp. 79-85.

Hallett & Hamburg Lodes, In re, 27 L. D. 104, p. 113.

Hustler & New Year Lode Claims, In re, 29 L. D. 668, p. 670.

(Lipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401, p. 405.

As against the Government and all subsequent locators, a location with its lines laid upon or over a prior location carries precisely the same rights, surface as well as extralateral, that it would carry if none of the lines had been so laid upon or over such prior location.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 543.

See Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.

The extralateral rights of a junior locator can not be decreased because laid on or over a senior location by a court arbitrarily changing an end line of such junior location, where such extralateral rights of the junior locator, as measured by his original end line, did not conflict with any extralateral rights of such senior location.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 108 Fed. 189.

Affirmed in Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538.

Reversed in Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 420.

See Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 121 Fed. 973, p. 977.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 593.

The end lines of a mining location may be laid upon the surface of a prior conflicting claim.

Hidden Treasure Lode, In re, 29 L. D. 156, p. 157.

War Dance Lode, In re, 29 L. D. 256, p. 257.

23. CONFLICTING EXTRALATERAL RIGHTS—DETERMINATION.

While the extralateral underground rights are not infrequently the most valuable property rights under a lode location, yet unless a locator can place his location lines upon or across an adjoining or intervening claim of another, he might often be compelled to choose between the loss of surface and the vein or veins beneath the surface, as well as the loss of the extralateral underground portion of the vein.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 75.

Hideo Gold Min. Co., In re, 30 L. D. 420, p. 425.

While overlapping of locations are frequent, yet the second location in such case is invalid so far as it affects the rights vested in the prior locator.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 80.

See Hustler & New Year Lode Claims, In re, 29 L. D. 668, p. 671.

Faxon v. Barnard, 1 Colo. 145, p. 147.

Lebanon Min. Co. v. Consolidated Rep. Min. Co., 6 Colo. 371, p. 380.

Where there are interlacing extralateral rights the more equitable rule is to permit each owner of a ledge to pursue it underground indefinitely and continuously, except such portion thereof as may be crossed by the ledge of a prior claimant.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 134 Fed. 268, p. 273.

Conflicting claims growing out of the extralateral rights given by this section can not be made the subject of an adverse claim, where there is no surface conflict.

New York Hill Co. v. Rocky Bar Co., 15 C. L. O. 3; 6 L. D. 318.

See Chollar Potosi, etc., Co. v. Julia, etc., Co., Copp's Min. Lands 93.

Saratoga v. Bulldozer Min. Claim, Sickels' Min. Dec. 252.

The regulations of the Department with references to conflicting claims do not apply to any case in conflict between the surveys of lode and placer claims, and the end line of the survey of a lode claim may be established within the boundaries of a patented placer claim.

Black Diamond Lode, In re, 22 L. D. 284, p. 286.

24. USE OF SURFACE OF ADJOINING CLAIMS.

This section does not authorize the locator of a mining claim to enter upon the surface of a claim owned or possessed by another, in claiming the right to follow a vein or ledge outside of his side lines, for any purpose whatever.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 50.

St. Louis Min., etc., Co. v. Montana Min. Co., 113 Fed. 900, p. 901.

Correction Lode, In re, 15 L. D. 67, p. 68.

This section expressly prohibits any locator or possessor of a vein or lode, which extends in its downward course within the vertical lines of a placer location, from entering upon the surface of such placer location, or disturbing the placer locator in any of his rights to the surface; and on the same theory it forbids all other persons from entering upon the surface of such placer locator for the purpose of exploring for veins or lodes.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 230.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 70.

Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430, p. 434.

See Hustler & New Year Lode Claims, In re, 29 L. D. 668, p. 672.

The owner of a vein or lode has the right to follow it on its dip outside the vertical side lines of the location, but no right is granted him to use the subsurface of such outside ground when owned or claimed by another for the purpose of exploring, reaching, or developing other claims, and such owner can not acquire a right of way or easement in such subsurface for any other purpose.

Patten v. Conglomerate Min. Co., 35 L. D. 617.

The right given by the statute to the locator to follow a vein or lode having its apex within the surface boundaries of his location outside of and beyond the plane of a side line extended vertically downward does not authorize such locator to construct or drift a tunnel from his own claim through an adjoining patented claim in order to reach the vein apexing within his surface boundaries.

St. Louis Min., etc., Co. v. Montana Min. Co., 113 Fed. 900, p. 902.

Affirmed in St. Louis Min., etc., Co. v. Montana Min., etc., Co., 194 U. S. 235.

The right of a junior locator to follow his vein underground is an entirely different thing from a right asserted by a junior locator to enter upon the surface of a prior location and locate a claim, the top or apex of which is within the surface of such prior location.

Wilhelm v. Silvester, 101 Cal. 358, p. 362.

The statute gives the locator of a mining claim the right of possession of the surface and of everything within his claim except the veins or lodes therein which may have their apices within the surface of another claim, and the owners of such other veins or lodes have the right to follow them into the claim of another, but this is the extent of their right, and there is no warrant for saying that they have any general right of exploration within land of an adjoining patented claim, whether above or below the surface, and the statute only gives them the right to follow such veins and confers upon them no right to approach it from any point other than the vein or lode itself.

St. Louis Min., etc., Co. v. Montana Min. Co., 113 Fed. 900, p. 902.

25. EXTRALATERAL RIGHTS NOT AFFECTED BY PATENT.

The right given a locator by this section to follow the dip of the vein beyond the side lines of his location is not limited to certificate locators, and the grant of a patent to an adjacent claimant does not cut off the right to follow the vein in its dip.

Cheesman v. Hart, 42 Fed. 98, p. 103.

The question of extralateral rights as between contending parties under different mining locations is one for the courts to determine, and the issuance of patent for a claim will not be an adjudication as to the right of another claimant.

Beik v. Nickerson, 29 L. D. 662.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 148.

This section is clear and specific in defining the rights of possession which locators of a mining claim are entitled to enjoy, and it does not limit the right of a patentee to the enjoyment of less rights and privileges than he could lawfully claim prior to the issuance of a patent.

Adelaide Consol. Silver Min., etc., Co. v. Gallagher, 6 C. L. O. 73, p. 74.

This section gives to a locator of a mining claim the exclusive right of possession and enjoyment of his surface location, and it can not be contended that the patent for his claim would give him rights less extensive than those held by mere location and occupation.

Hawke v. Deffeback, 4 Dak. 20, p. 29.

The right to follow the dip of a vein outside of the side lines of a location attaches and is incident to the location of the claim and not to the patent.

Eureka Min. Co. v. Pioneer Consol. Min. Co., 8 C. L. O. 106.

Smuggler v. Seventy-eight Lode (unreported, cited in 8 C. L. O. 106).

The grantee of a part of a mining claim has the same right to follow veins upon which he commences to work within his surface lines as was possessed by the original patentee before the conveyance was made.

- Boston & Montana, etc., Min. Co. v. Montana Ore Purchasing Co., 89 Fed. 529, p. 532.
 See Richmond Min. Co. v. Eureka Consol. Min. Co., 103 U. S. 839.
 Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.
 Stinchfield v. Gillis, 107 Cal. 84, p. 86.

I. TRESPASS—PRESUMPTION AND JUSTIFICATION.

A person entering within the side lines of the mining claim of another to mine and take ore therefrom is prima facie a trespasser.

- Cheesman v. Shreeve, 37 Fed. 36.
 Montana v. Clark, 42 Fed. 626, p. 630.
 Doe v. Waterloo Min. Co., 54 Fed. 935, 939.
 Bluebird Min. Co. v. Murray, 9 Mont. 468, p. 475.

A person entering upon a valid location of another is a trespasser, and it will not be presumed that Congress intended that any rights should be created by trespass.

- Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 74.

A person working underneath the surface of a vein belonging to another who is in the possession of his location is a trespasser and liable for the value of ore taken therefrom.

- Mining Co. v. Tarbet, 98 U. S. 463.
 Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 148.

An unlawful possessor or a stranger to the paramount source of title of a mining claim has no right to follow the dip of a vein into the adjoining mining claim having a valid location.

- Doe v. Waterloo Min. Co., 54 Fed. 935, p. 937.

The right given by this section to follow a vein or lode outside the side lines of a location can not authorize or justify a trespass.

- Bluebird Min. Co. v. Murray, 9 Mont. 468, p. 475.

The owner of a mining claim charged with trespass may justify such trespass by showing he brought himself within the provisions of the statute and reached the point of the alleged trespass by pursuing and excavating a vein or lode which had its apex within the side lines of his location, and that his location was made pursuant to the statutory provisions.

- Cheesman v. Shreeve, 40 Fed. 787, p. 790.

There can be no distinction between an ouster upon the surface and an ouster beneath the surface except in cases arising under the mining laws by virtue of this section.

- Lincoln-Lucky & Lee Min. Co. v. Hendry, 9 N. Mex. 149, p. 155.

Valuable mining grounds may be held for an indefinite time under a mere possessory right, and this right will be protected as against intrusion of strangers.

- Bonner v. Meikle, 82 Fed. 697, p. 699.
 See Forbes v. Gracey, 94 U. S. 762, p. 767.
 Gillis v. Downey, 85 Fed. 483, p. 487.

In an action for trespass upon the extralateral dip of that part of a vein which has its apex within a valid location, the plaintiff must allege the existence of a vein having its apex within his surface boundaries and that such vein departed from his side lines on its downward course between the planes of his end lines, and that his end lines are parallel.

- Daggett v. Yreka Min., etc., Co., 149 Cal. 357, p. 361.
 See Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147.

J. PATENT FOR MINING LOCATION.

1. EFFECT AS A GRANT.
2. WHEN PATENT DENIED.
3. RELIEF AGAINST PATENT—DETERMINATION.

1. EFFECT AS A GRANT.

A patent to a mining claim is in effect a grant of the vein or lode throughout its entire depth extended downward vertically, though it may so far depart from the perpendicular in its downward course as to extend outside of the vertical side lines of the location.

Bluebird Min. Co. v. Largey, 49 Fed. 289, p. 292.

A patent for a mining claim is a grant of the mining premises described, together with the statutory rights defined in this section.

Duggan v. Davey, 4 Dak. 110, p. 124.

A person in possession of the surface of a mining claim, and for which he also holds a patent, has the ownership and possession of the soil, including all within the soil, and it also gives to the appropriator of a vein the right, unknown to the common law, to pursue such vein outside of the side lines of his location, and each mineral claimant holds his possession subject to the same rights in others and is therefore liable to have his land entered by an adjoining proprietor pursuing his vein in its course beyond his own side lines, otherwise he may challenge the right of any intruder within the lines of his claim.

Duggan v. Davey, 4 Dak. 110, pp. 119, 122.

2. WHEN PATENT DENIED.

A patent will not issue on an application that excludes therefrom the land upon which is situated the discovery shaft and improvements, and where the proof fails to show the discovery of mineral within the claim applied for.

Silver City Min. Co. v. Lowry, 19 Utah 334, p. 345.

Cayuga Lode, In re, 5 L. D. 703.

Lone Dane Lode, In re, 10 L. D. 53.

Kennedy, In re, 10 C. L. O. 150.

An entry can not be made of the residue of an original mining claim, a part of which has been patented, where no proof is made that any vein or lode, having its apex within the ground sought to be entered, exists or has been discovered.

Silver City Min. Co. v. Lowry, 19 Utah 334, p. 345.

If a senior locator permits a junior location that contains the original discovery point to come to patent without protest, the residue of his original claim will be validated by a second discovery within the surface lines and outside of such junior location, where such discovery was made before patent was actually issued for such junior location, and he may hold all the ground not included in the patent of such junior location, notwithstanding the loss of the original discovery.

Silver City Min. Co. v. Lowry, 19 Utah 334, p. 347.

See *Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co.*, 1 L. D. 584, p. 593.

If the existence of a vein be shown beyond the lines of the conflicting survey and an application be made for patent, the application will not be denied because of a sale or surrender of some other portion of the lode originally embraced in the discovery and location.

Silver City Min. Co. v. Lowry, 19 Utah 334, p. 348.

See *Gwillim v. Donnellan*, 115 U. S. 45.

Little Pittsburgh Consol. Min. Co. v. Amie Min. Co., 17 Fed. 57.

Spur Lode, In re, 4 L. D. 160.

3. RELIEF AGAINST PATENT—DETERMINATION.

A person can only have relief against a patent issued by the Government by showing a better right to the land than the patentee, and such as in law should have been respected by the officers of the Land Department, and would have given him the patent; and this rule applies to mining claims.

Sparks v. Pierce, 115 U. S. 408, p. 412.

Where a patent is issued upon application, any question subsequently arising as to the right of the patentee to follow the vein or lode, as given by this section, would be a matter for the courts to settle and can not be determined by the Land Department upon an adverse claim where there is no surface conflict alleged.

New York Hill Co. v. Rocky Bar Co., 6 L. D. 318, p. 320.

Lawson v. United States Min. Co., 207 U. S. 1, p. 14.

See United States Min. Co. v. Lawson, 134 Fed. 769, p. 776.

Copp's Min. Lands 93; Copp's Min. Dec. 101.

Chollar, Potosi, etc., Co. v. Julia, etc., Co.

The rights of a patentee to a mining claim can not be injuriously affected by an application based upon an old location, as the applicant has the exclusive right of possession of all veins and ledges throughout their entire depth, the top or apex of which lies inside of the surface lines of his claim extended downward vertically.

New York Hill Co. v. Rocky Bar Co., 6 L. D. 318.

Mere occupants of the public lands without title, and without any attempt having been made by them to secure the title, can not resist the enforcement of a patent issued by the United States on the ground of such occupation.

Sparks v. Pierce, 115 U. S. 408, p. 412.

Liens which have attached to a prior claim before patent are not impaired by the issue of the patent.

Forbes v. Gracey, 9 Fed. Cas. 401, p. 404.

Failure to comply with local mining regulations may be shown by protest or adverse claim, but affords no ground for proceeding against a patentee.

Hawke, In re, 5 L. D. 131.

K. RULES AND REGULATIONS OF MINERS.

The first enactment by Congress simply recognized the obligatory force of local rules and regulations in each mining locality as to obtaining, transferring, and identifying the possession of the various locators.

Chambers v. Harrington, 111 U. S. 350, p. 352.

The local rules and regulations of the miners require every person who asserts an exclusive right of possession to his claim to expend something of labor or of value thereon as evidence of his good faith.

Chambers v. Harrington, 111 U. S. 350, p. 353.

L. STATE REGULATIONS—EXTENT AND VALIDITY.

The laws of a State constitute a part of the laws by which a mining right is determined.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 3 Sawy. 634; 9 Fed. Cas. 592.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100, p. 105.

A State has authority to add to the general location requirements of this section, as well as of section 2324 R. S., where such provisions do not conflict with these sections.

Saxton v. Perry, 47 Colo. 263, p. 267.

See Belk v. Meagher, 104 U. S. 279.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 67.

Sweet v. Webber, 7 Colo. 443.

This section expressly recognizes the validity of territorial laws and makes the enjoyment of the right by a locator to the exclusive possession of his claim depend on his compliance with such laws, if not in conflict with the United States statutes.

O'Donnell v. Glenn, 8 Mont. 248, p. 258.

The title held by the Government to real estate upon which a mining claim has been located can not be affected or incumbered in any way by State legislation.

Black v. Elkhorn Min. Co., 52 Fed. 859, p. 861.

The right of an alien to inherit a mining claim located upon Government land is as against all persons except the United States determined by the laws of the State in which the mining property is located.

Lohman v. Helmer, 104 Fed. 178, p. 182.

M. JURISDICTION OF COURTS—FEDERAL QUESTIONS.

See sec. 2326, p. 453.

The right of a person attempting to enter beneath the surface of the mining claim of another, and mine or take the ore, involves the question as to whether there is a vein or lode having its top or apex within the surface lines of his own location, and the question as to the right of entrance as affected by priority of location and the dip of the vein, and when these questions arise the case is within the jurisdiction of the United States court.

Cheesman v. Shreeve, 37 Fed. 36, p. 37.

See *Frank Gold, etc., Min. Co. v. Larimer Min., etc., Co.*, 8 Fed. 724.

A controversy as to the title to minerals, depending upon whether the mine was patented under the act of 1866 or under the act of 1872, depending also upon the parallelism or want of parallelism of the end lines of the location, presents a Federal question, and confers jurisdiction on the Federal courts.

Kennedy Min., etc., Co. v. Argonaut Min. Co., 189 U. S. 1, p. 5.

The rights of the parties where one mining claim is located within the limits of another valid mining claim involves the construction of the United States mining laws and gives jurisdiction to a Federal court where the identical question has not been previously determined.

Inez Min. Co. v. Kinney, 39 Fed. 832, p. 834.

Gwillim v. Donnellan, 115 U. S. 45.

As to whether a Federal question is presented when the right arises of the holder of a lode claim to follow a vein or lode whose apex lies within the boundaries of his claim into an adjoining claim held by another and under the surface of the same.

Murray v. Mining Co., 45 Fed. 385.

Bluebird Mining Co. v. Largey, 49 Fed. 289, p. 291.

The question of the ownership or title to mineral at the point of intersection of two veins does not present a Federal question.

Gillis v. Stinchfield, 159 U. S. 658.

A controversy between different claimants concerning the dip and apex of lodes or veins does not necessarily confer jurisdiction on a Federal court, because it may involve a construction of this section of the statute.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 585.

NOTE.—The earlier cases on the question of Federal jurisdiction have been overruled either expressly or by implication, and the rule established to the effect that the questions of amount in controversy and adverse citizenship determine the jurisdiction of Federal courts.

See *Blackburn v. Portland Gold Min. Co.*, 175 U. S. 751.

Shoshone Min. Co. v. Rutter, 177 U. S. 505.

SECTION 2323, REVISED STATUTES.

Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within 3,000 feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

This section is the same as section 4, act of May 10, 1872 (17 Stat. 91), p. 678.

A. RIGHTS GRANTED TUNNEL OWNERS.

B. LOCATION OF VEIN AFTER DISCOVERY IN TUNNEL, p. 174.

A. RIGHTS GRANTED TUNNEL OWNERS.

1. PURPOSE AND APPLICATION OF SECTION.
2. CONSTRUCTION OF PARTICULAR TERMS USED.
3. RIGHTS GRANTED BY SECTION.
4. NATURE OF TUNNEL RIGHTS.
5. LIMITATIONS ON RIGHTS OF TUNNEL OWNER.
6. RIGHTS SECURED ACCORDING TO LOCAL LAWS AND CUSTOMS.
7. TUNNEL OWNER PROTECTED PENDING DILIGENT PROSECUTION.
8. FAILURE TO PROSECUTE WORK DILIGENTLY.
9. TUNNEL RIGHTS NOT DEPENDENT ON DISCOVERY.
10. LINE OF TUNNEL—MEANING.
11. SIZE AND EXTENT OF TUNNEL LOCATION.
12. DEVELOPMENT PROJECTS NOT REPRESENTATION WORK.
13. RIGHTS OF TUNNEL OWNER ON DISCOVERY OF VEIN.
14. TUNNEL RIGHTS SUBJECT TO THOSE OF PRIOR SURFACE LOCATIONS.
15. TUNNEL RIGHTS SUPERIOR TO THOSE OF SUBSEQUENT SURFACE LOCATORS.
16. EXTRALATERAL RIGHTS OF TUNNEL OWNER.
17. EXCESSIVE LENGTH OF TUNNEL—EFFECT.
18. RIGHT TO SURVEY AND PLAT.
19. FAILURE OF TUNNEL OWNER TO ADVERSE PATENT APPLICATION—EFFECT.
20. PATENT FOR TUNNEL NOT AUTHORIZED.

1. PURPOSE AND APPLICATION OF SECTION.

The purpose of this section is to give to the tunnel locator the possession and enjoyment of all veins and lodes in the line of the tunnel not appearing on the surface.

Tioga Consol. Min. Co., In re, 8 C. L. O. 88, p. 89.

Adams, In re, 42 L. D. 456, p. 457.

This section commonly called the tunnel-site act is applicable to veins and lodes discovered in tunnel locations.

Ellet v. Campbell, 18 Colo. 510, p. 517.

This section was designed to encourage the running of tunnels for the discovery and development of veins or lodes of the precious metals not appearing on the surface and not previously known to exist.

Ellet v. Campbell, 18 Colo. 510, p. 519.

This section was enacted for the encouragement and protection of persons engaged in exploring for precious metals by means of tunnels.

Hope Min. Co. v. Brown, 7 Mont. 550, p. 554.

In the construction of this statute the courts will assume that Congress considered the hazard and expense of constructing a tunnel, and gave to the tunnel owner the advantage of all veins or lodes discovered therein as against a person locating the vein on the surface after the commencement of the tunnel, and where neither hazard nor expense is involved.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 207.

It was the intention of Congress, as shown by this section, to secure rights to all such as should run tunnels for the development of a vein or lode pursuant to its provisions, and to withdraw from exploration for lodes not appearing on the surface so much of the public domain as lay upon the line of the tunnel, and to reserve such for the benefit of the tunnel owner so long as he prosecuted the work with reasonable diligence.

Back v. Sierra Nevada Consol. Min. Co., 2 Idaho 420 (386, p. 390).

There is no distinction to be drawn by reason of this section or of the act of February 11, 1875 (18 Stat. 315), between a tunnel claim under which a tunnel is run for the development of veins or lodes already located, or one pursuant to which a tunnel is projected for the discovery of blind lodes or veins.

Adams, In re, 42 L. D. 456, p. 457.

2. CONSTRUCTION OF PARTICULAR TERMS USED.

See section 2320, pp. 64, 80.

The clause "to the same extent as if discovered from the surface" is used in its natural and customary sense, and it measures the extent, the distance along the vein or lode to which the right of possession given by the statute extends, and not the general benefits conferred by the discovery.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 204.

Ellet v. Campbell, 18 Colo. 510, p. 526.

The words "not previously known to exist" refer to the time of the location and commencement of the tunnel and not the respective times of the discoveries of the various veins in the tunnel.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 205.

The word "mines" in this section, the phrase "lands valuable for minerals" in section 2319 R. S., the phrase "valuable mineral deposits" in section 2319 R. S., and the expression "valuable deposits" in section 2325 R. S., as well as the term "mines of gold" in section 2392, all refer to substantially the same thing and embrace both lodes and veins and placers.

Hawke v. Deffebach, 4 Dak. 20, p. 33.

The words "to the same extent" used in this section refer to the length along the line of the vein or lode, as this is the natural and ordinary meaning of the words, and there is nothing in the context or in the substance to justify a different meaning.

Campbell v. Ellet, 167 U. S. 116, p. 119.

The words "vein," "lode," and "ledge," occurring in this section are used as being synonymous.

Synnott v. Shaughnessy, 2 Idaho 122 (111, p. 116).

3. RIGHTS GRANTED BY SECTION.

This section grants tunnel rights.

Baillie v. Larson, 138 Fed. 177, p. 178.

It gives a right to locate a tunnel 3,000 feet from the face and includes the right to lodes discovered in such tunnel the same as if discovered from the surface; that is, 300 feet on each side of the tunnel.

Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, p. 481.

Ellet v. Campbell, 18 Colo. 510, p. 522.

See Corning Tunnel Co. v. Pell, 4 Colo. 507.

Back v. Sierra Nevada Min. Co., 2 Idaho (386), 420.

Hope Min. Co. v. Brown, 7 Mont. 550.

Hope Min. Co. v. Brown, 11 Mont. 370.

The owner of a tunnel, by locating it and diligently prosecuting the work, has the right of possession of all veins or lodes within 3,000 feet from its face on the line thereof, not previously known to exist, discovered in such tunnel, the same as if discovered from the surface.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 204.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 340.

Campbell, In re, 4 C. L. O. 102.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 8.

The right to a vein discovered in a tunnel dates by relation back to the time of the location of the tunnel site.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 113.

It is the measure of the right and title to a vein which the owner of a tunnel acquires by its discovery, and it gives him a greater and more valuable right than is granted to a prospector upon the surface.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 204.

It is the right to the possession of veins not known to exist before the owner of a tunnel located and commenced to excavate it that is secured to him by this section, if he subsequently finds them in his tunnel, and not the right to those only that were not known to exist when he reached them in the tunnel.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 205.

The privilege granted by this section applies to one who locates a tunnel for discovery purposes as well as for development purposes.

Fisure Min. Co. v. Old Susan Min. Co., 22 Utah 438, pp. 444, 445.

4. NATURE OF TUNNEL RIGHTS.

A tunnel is not a mining claim, though sometimes inaccurately called so; but it is only a means of exploration or discovery.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 357.

Hunter, In re, 5 C. L. O. 130.

The subsurface is as free and open to exploration as the surface, and a tunnel is only a means of exploration. A citizen is no more required to have a permit for exploration by tunnel beneath the surface than to explore on the surface for mineral.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 355.

The claim of a tunnel mining company, or a tunnel location, is a mining claim within the meaning of the mining laws.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 587.

Burton, In re, 29 L. D. 235, p. 236.

A tunnel location is a mining claim, and the owner may present it as an adverse claim in a proper case.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 8 C. L. O. 173, p. 174.

No patent can issue for a vein or lode without surface ground, and as the surface which overlies the apex of a vein or lode discovered in a tunnel can only be ascertained by sinking a shaft or by following a lode upon its dip from the point of discovery, the survey of such a lode can not be properly made until it has been definitely determined what portion of the public domain overlies the apex of such lode.

Campbell, In re, 4 C. L. O. 102, p. 103.

The question of whether this section authorizes the location of ground for dumping purposes, together with a tunnel location, must be decided by a proper court in the adverse proceedings and will not be decided by the Land Department.

Burton, In re, 29 L. D. 235, p. 236.

5. LIMITATIONS ON RIGHTS OF TUNNEL OWNER.

The locator of a surface mining claim is not required to adverse an application for patent for a lode claim made by a tunnel owner whose tunnel was located and constructed subsequent to such surface location, and such failure to adverse does not preclude the surface locator from asserting his rights as against the tunnel owner, and such tunnel owner is not entitled to the ore in a blind vein discovered in his tunnel at a point beneath the surface and is in the vertical side lines of such prior surface location.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 340.

This section provides what rights may be acquired to blind veins discovered in a tunnel run for the development of the vein, or for the discovery of mines, and provides how inchoate rights to blind veins may be initiated and become absolute, but does not declare that a tunnel may be projected into or across prior valid locations, nor does it grant a tunnel owner the right to search for minerals in lands belonging to another, or that thereby a location for such purposes can be carved out of appropriated public domain; but it does provide that locations on the line of the tunnel as contemplated of veins not appearing on the surface made by others after the commencement of tunnel work, and while it is being diligently prosecuted, shall be invalid.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 23-25.

While this section offers some inducements for running a tunnel, yet it places specific limitations on the rights which the tunnel owner can acquire. Thus his rights reach only to blind veins, such as are not known to exist and not discovered from the surface, but he can acquire no vein which has previously been discovered from the surface. It also limits the length of the tunnel to 3,000 feet, beyond which he can acquire no rights under his tunnel location, and the veins to which he can acquire any right are those which the tunnel itself crosses.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 113.

See *Butte Consol. Min. Co. v. Barker*, 35 Mont. 327, p. 341.

This section, construed in connection with section 2320, R. S., gives a tunnel claimant no right to any claim except for such veins or lodes as may be discovered within 3,000 feet from the face of his tunnel and in the tunnel itself.

Hope Min. Co. v. Brown, 7 Mont. 550, p. 555.

6. RIGHTS SECURED ACCORDING TO LOCAL LAWS AND CUSTOMS.

When a tunnel right is secured according to local statutes or customs and regulations of miners, then this section permits a tunnel 3,000 feet in length and a right to appropriate the veins discovered therein to the same extent as if discovered from the surface.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 355.

This section makes no provision as to what is necessary in order to secure a tunnel right, but this is left to the customs and regulations of miners and the statutes of the several States.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc. Co., 196 U. S. 337, p. 355.

7. TUNNEL OWNER PROTECTED PENDING DILIGENT PROSECUTION.

See sec. 2324, R. S. (amended section), p. 282.

The owner of a tunnel in process of construction has a right not accorded to a surface discoverer in that he is protected pending the progress of the tunnel construction against all locations made on the surface on the line of the tunnel.

Hope Min. Co. v. Brown, 7 Mont. 550, p. 555.

See Hope Min. Co. v. Brown, 11 Mont. 370, p. 379.

From the time of the location of a tunnel under this section the owner has the inchoate right to the possession of every vein or lode within 3,000 feet from the face of such tunnel on the line thereof that was not known to exist when the tunnel was located and its excavation commenced, depending only upon the diligent prosecution of the work and the subsequent discovery of the vein therein.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 207.

A tunnel site located under this section may be utilized for development purposes, and while the owner may lose the right to the tunnel site by failure to prosecute the work with reasonable diligence, yet the work may be credited as assessment work on claims which are in fact benefited by it.

Dawson, In re, 40 L. D. 17, p. 20.

See Fissure Min. Co. v. Old Susan Min. Co., 22 Utah 438.

8. FAILURE TO PROSECUTE WORK DILIGENTLY.

The owner of the tunnel is impliedly given an inchoate right in any veins or lodes which may be found within, or within a certain distance of his tunnel, and this right is kept alive by his diligent prosecution of the work, and a failure to work on his tunnel for six months is considered an abandonment of the right to all undiscovered veins on the line of the tunnel.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 114.

Hope Min. Co. v. Brown, 11 Mont. 370, p. 383.

Back v. Sierra Nevada Consol. Min. Co., 2 Idaho 420 (386).

This section gives a tunnel owner the right of possession of all veins or lodes within 3,000 feet from the surface of his tunnel and on the line thereof, and makes void lode locations on the line of the tunnel while the same is being prosecuted with reasonable diligence, but a six months' failure to prosecute the work is considered as an abandonment.

Hope Min. Co. v. Brown, 11 Mont. 370, p. 378.

A failure to prosecute the work on a tunnel for six months is considered an abandonment of the right to all undiscovered veins on the line of such tunnel.

Fissure Min. Co. v. Old Susan Min. Co., 22 Utah 438, p. 444.

9. TUNNEL RIGHTS NOT DEPENDENT ON DISCOVERY.

A discovery of mineral is not essential to create a tunnel right or to maintain possession thereof.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 355.

Uinta Tunnel Min., etc., Co. v. Ajax Gold Min. Co., 141 Fed. 563, p. 567.

This section gives to the tunnel discoverer the right to possession of the veins and prescribes no condition to the discovery.

Campbell v. Ellet, 167 U. S. 116, p. 119.

This section provides that the owner of a tunnel by locating and diligently prosecuting it, without the discovery of any vein or lode, shall have the right of possession of all veins or lodes within 3,000 feet from the face of such tunnel on the line thereof not previously known to exist.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 114.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 32 U. S. App. 75.

This section seems to give the right to the possession of certain veins or lodes to the owner of a tunnel before his discovery or location to any lode or vein whatever, depending only upon his subsequent discovery of such veins in his tunnel.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 113.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200.

10. LINE OF TUNNEL—MEANING.

The line of a tunnel, within the meaning of this section, is a "width marked by the exterior lines or sides of the tunnel," and a lode outside of such exterior lines is not on the line of the tunnel.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 589.

Corning Tunnel Co. v. Pell, 4 Colo. 507.

Hope Min. Co. v. Brown, 11 Mont. 370, p. 379.

See Back v. Sierra Nevada Consol. Min. Co., 2 Idaho 420 (386).

The line of the tunnel, as used in this section, is the width thereof and no more, and upon this line only is prospecting for blind lodes prohibited while the tunnel is in progress, and the words "not previously known to exist" refer to undiscovered veins or lodes.

Hunter, In re, 5 C. L. O. 130.

The line of a tunnel, within the meaning of this section, is the width thereof and no more, and upon this line only is prospecting for blind lodes prohibited while the working of the tunnel is in progress, but tunnel owners are granted a right to 1,500 feet of each blind lode not previously known to exist which may be discovered in such tunnel; but other parties are debarred from prospecting for blind lodes or running tunnels outside of the line of another tunnel, and the line of any such tunnel must be marked on the surface by stakes or monuments placed along the same from the point of commencement to the terminus of the tunnel line; and when a lode is first discovered by reason of such a tunnel, the tunnel owners have the option of recording their claim of 1,500 feet on one side of the point of discovery or partly upon one side and partly upon the other; but such a claim can not absorb the actual claim or possession of other parties on a lode which had been discovered and claimed outside the line of such tunnel before the discovery.

Corning Tunnel, Min., etc., Co. v. Pell, 3 C. L. O. 130, p. 131.

Hope Min. Co. v. Brown, 11 Mont. 370, p. 379.

11. SIZE AND EXTENT OF TUNNEL LOCATION.

A tunnel location 6 feet wide and 3,000 feet in width along the course of the tunnel may be recognized.

Corning Tunnel Min., etc., Co. v. Pell, 3 C. L. O. 130, p. 131.

There is no authority for the location by a tunnel owner of a mining claim describing a tract of land 3,000 by 1,500 feet and embracing more than 100 acres of land.

Corning Tunnel, Min., etc., Co. v. Pell, 3 C. L. O. 130, p. 131.

This section does not state what shall be the limits of a tunnel right, and there is no authority for extending it to 300 feet on each side of the tunnel, but the rights of the tunnel owner are limited to discoveries on the line of the tunnel and on the line of a vein or lode discovered in the tunnel.

Hope Min. Co. v. Brown, 7 Mont. 550, p. 556.

12. DEVELOPMENT PROJECTS NOT REPRESENTATION WORK.

The term "development" used in this section refers only to the work required to be done after the discovery and location and may apply to a tunnel run for the development of a vein or lode, but this language presupposes a discovery.

Union Oil Co., In re, 23 L. D. 222, p. 223.

Where a tunnel has been run for the discovery of a mine and the claims are predicated upon blind veins or lodes discovered in the tunnel, the department believes it neither consistent with the spirit of the statutory provision governing expenditures either for annual representation or patent purposes, nor permissible from the standpoint of administrative considerations, that a purely development project, though of the necessary aggregate value, if wholly preceding the location of a claim or any portion of a group, should be accepted in full satisfaction of the requirement as to a subsequent location or locations, where the statute requires that an expenditure of at least the value of \$500 shall succeed the location of every claim having its development in view and contributing sufficiently to that end.

Aldebaran Min. Co., In re, 36 L. D. 551, p. 557.

See Chambers v. Harrington, 111 U. S. 350.

Copper Glance Lode, In re, 29 L. D. 542, p. 548.

13. RIGHTS OF TUNNEL OWNER ON DISCOVERY OF VEIN.

On the discovery of a vein or lode in a tunnel the rights of the tunnel claimant are exactly in extent what they would be if the discovery had been made from the surface.

Hope Min. Co. v. Brown, 7 Mont. 550, p. 555.

The owner of a tunnel mining claim, upon the discovery of a vein in his tunnel while prosecuting it with reasonable diligence, is entitled to the possession of such vein to the same extent along such vein as if discovered from the surface, and is entitled to the possession of any 1,500 feet in continuous length along such vein, which includes the point of discovery in his tunnel.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 211; reversing Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 53 Fed. 321, p. 323.

Harris v. Equator Min., etc., Co., 8 Fed. 863, p. 865.

Ellet v. Campbell, 18 Colo. 510.

14. TUNNEL RIGHTS SUBJECT TO THOSE OF PRIOR SURFACE LOCATIONS.

A tunnel can only be run in subordination to the rights of the prior surface locator.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 508.

See Baillie v. Larson, 138 Fed. 177, p. 178.

There is no implication that the location of a tunnel is a displacement of any valid surface location made before the commencement of the tunnel; but on the contrary

it is a necessary implication of the preservation of any such surface rights. There is no implication of any conflict with the rights given by this section and those given by the preceding section.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, pp. 357, 358.

The right of way of tunnels given in this section are subject to the rights conferred upon surface locators of mining locations under the preceding section.

Calhoun Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 501.

A claim under a right of possession may be asserted by virtue of a prior discovery to a vein or lode discovered in running a tunnel.

Ellet v. Campbell, 18 Colo. 510, p. 517.

A tunnel locator can take no rights which conflict with a prior valid location, and priority determines the rights between conflicting locations, and the rights of a locator to a valid existing location can not be affected by a subsequent tunnel location.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 24.

See *Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co.*, 167 U. S. 108.

Ellet v. Campbell, 18 Colo. 510.

Campbell v. Ellet, 167 U. S. 116.

The law gives a tunnel owner only such lodes as may be discovered on his tunnel, and only prevents the location by other parties of lodes upon the line of such tunnel, not appearing on the surface, and accordingly a tunnel discovery can not affect a lode location made by discovery on the surface.

Corning Tunnel Min., etc., Co. v. Pell, 3 C. L. O. 130, p. 131.

A tunnel owner has no right of way for his tunnel through the ground of a prior surface location so far as it is based on the statutes of the United States, and such right must attach if at all under local statutes.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 509.

Baillie v. Larson, 138 Fed. 177, p. 178.

In a controversy over the ownership of minerals between the owner of a tunnel and the surface locator, the tunnel owner is not permitted to prove that at the time of the location of his tunnel no mineral had in fact been discovered on the surface location where a patent has been regularly issued to the surface locator.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 355.

There is no statutory warrant for placing in a patent to the owner of a lode claim any limitation of his title by a reservation of tunnel rights.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 358.

Deffeback v. Hawke, 115 U. S. 392, p. 406.

A tunnel site can only embrace unappropriated public domain, and under this section no rights are conferred to extend a tunnel through previous valid subsisting locations, and a tunnel locator has no right to invade an existing surface lode location and take therefrom any ore or mineral.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 28.

See *Wakeman v. Norton*, 24 Colo. 192.

A tunnel owner may have the right to continue his tunnel through a lode claim either before or after patent.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 358.

15. TUNNEL RIGHTS SUPERIOR TO THOSE OF SUBSEQUENT SURFACE LOCATORS.

Surface mining claims located subsequent to the commencement of the construction of a tunnel are taken and held subject to any rights of the tunnel owner thereafter developed.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 341.

This section expressly declares that any subsequent discovery and location of a vein or lode shall not deprive the owner of a tunnel of his right to the possession of such vein guaranteed him by the statute if he afterwards finds it in the tunnel; neither can mere discovery without location have this effect.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 205.

No discovery or location of a vein or lode subsequent to the location and commencement of a tunnel can deprive the tunnel owner who diligently prosecutes his work to any vein discovered therein.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 207.

Back v. Sierra Nevada Min. Co., 2 Idaho 420 (386).

Hope Min. Co. v. Brown, 7 Mont. 550.

Where a tunnel right is vested before a discovery of a surface lode claim, the tunnel owner's right is prior and superior to that of the locator of the lode claim.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, pp. 340, 355.

This section contemplates that a tunnel may be run for the development of veins or lodes or for the discovery of mines, and gives a right of possession of any such veins or lodes, if not previously known to exist, and makes location on the surface after the commencement of the tunnel invalid.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 357.

This section can not be construed to mean that any discoveries and locations made by third persons, subsequent to the commencement of a tunnel and before it reaches the vein, will deprive the tunnel owner of such veins except the small segment within the bore of the tunnel, as such a construction would defeat the policy of the Government and the purpose in the enactment of this section.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 206.

See Corning Tunnel, etc., Co. v. Pell, 4 Colo. 507.

Hope Min. Co. v. Brown, 7 Mont. 550.

The owners of a tunnel mining claim are not estopped to maintain their right to a blind vein discovered in their tunnel after a junior lode mining claim discovered from the surface is patented, where such blind vein had not been discovered, and was not known to exist, and which lay more than 300 feet distant from the line of the tunnel and nearly parallel to it, though they failed to make any adverse claim.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 203.

Affirmed in Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108.

See Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 301.

Hall v. Equator Min., etc., Co., 11. Fed. Cas. 222.

Branagan v. Dulaney, 8 Colo. 408.

Lee v. Stahl, 9 Colo. 208.

Morgenson v. Middlesex Min., etc., Co., 11 Colo. 176.

A lode locator who has failed, by means of an adverse claim, or otherwise, to have his rights protected as against a tunnel location, can not have a clause in the tunnel patent excepting therefrom all his rights and interests.

Tioga Consol. Min. Co., In re, 8 C. L. O. 88, p. 89.

Tunnel rights under this section can be protected in the courts, but they must be asserted in a proper manner.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 8 C. L. O. 173, p. 174.

See Corning Tunnel, etc., Co. v. Pell, 4 Colo. 507.

16. EXTRALATERAL RIGHTS OF TUNNEL OWNER.

It is plainly deducible from this and other sections, and the holdings of the courts, that a tunnel owner has the right, on the discovery of a vein or lode within his tunnel location, to follow such vein or lode, though it pass within the vertical planes of the lines of a prior surface location.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108.

Campbell v. Ellet, 167 U. S. 116.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 355.

The owner of a tunnel has the right to follow any vein or lode discovered within his tunnel limits, and is entitled to the same as against a subsequent surface locator who discovers the same vein by means of a shaft.

Campbell v. Ellet, 167 U. S. 116, p. 119.

The proprietor of a tunnel who is in the actual possession of a vein or lode having its top or apex in a subsequent locator's adjoining claim, the end lines of which are not parallel, may enjoin the proprietor of such adjoining claim from sinking a shaft or incline which will, if continued, cut the tunnel of the complainant.

Montana Co. v. Clark, 42 Fed. 626, p. 631.

17. EXCESSIVE LENGTH OF TUNNEL—EFFECT.

The present statute limits the tunnel to 3,000 feet, but a tunnel 5,000 feet in length does not render the entire claim void, but the location would be good to the extent of 3,000 feet in length at least.

Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, p. 481.

See *Richmond Min. Co. v. Rose*, 114 U. S. 576.

Gohres v. Illinois, etc., Min. Co., 40 Oreg. 516, p. 519.

A tunnel constructed prior to the statute of July 26, 1866, is valid, although more than 3,000 feet in length, where it was constructed according to local rules and customs of miners in force at the time; and such location is protected by the general mining laws.

Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, p. 481.

18. RIGHT TO SURVEY AND PLAT.

A claimant, having a mining claim which has been located and recorded according to law, has the right to have it surveyed and platted in accordance with his location, under the direction of the surveyor general; and the rule applies to tunnel locations.

Orient, Occident, & Other Mines, In re, 7 C. I. O. 82.

See *Mountaineer Min. Co.*, In re, 7 C. L. O. 101.

19. FAILURE OF TUNNEL OWNER TO ADVERSE PATENT APPLICATION—EFFECT.

The rights of a tunnel owner upon the discovery of a vein in his tunnel are not destroyed or impaired by his failure to adverse an application for surface patent, where such application was made before the discovery of his vein.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 115.

See *Murray v. Polglase*, 23 Mont. 401, p. 417.

When a claim to a tunnel site has been located before the entry of conflicting lode claims, which subsequently pass to patents, the question of whether discoveries of mineral in place were made in such lode claims before or after the location of the

claim to the tunnel site was perfected is open to determination by means of the testimony of witnesses, and on this question the patent is not conclusive.

Uinta Tunnel Min., etc., Co. v. Cripple Creek Min., etc., Co., 119 Fed. 164, p. 170.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 565, 567.

Champion Min. Co. v. Consol. Wyoming Gold Min. Co., 75 Cal. 78.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286.

Davis v. Weibbold, 139 U. S. 507.

Uinta Tunnel Min., etc., Co. v. Ajax Gold Min. Co., 141 Fed. 563.

20. PATENT FOR TUNNEL NOT AUTHORIZED.

There is no provision of the statute for granting a patent to the owner of a tunnel, and none is, in fact, ever issued.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 355.

A tunnel owner takes no ground for which he is called upon to pay and consequently is entitled to no patent.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 358.

This section does not authorize the sale or patenting of any ground or contemplate any disposal unless the ground be otherwise claimed or appropriated.

Adams, In re, 42 L. D. 456, p. 457.

Locators of lode claims on the line of a tunnel location are entitled to protection, and may assert an adverse claim and have all disputed questions of rights settled in a court of competent jurisdiction.

Tioga Consol. Min. Co., In re, 8 C. L. O. 83, p. 89.

B. LOCATION OF VEIN AFTER DISCOVERY IN TUNNEL.

1. NECESSITY AND NATURE.
2. SURFACE LOCATION NOT REQUIRED.
3. EXTENT AND FORM OF TUNNEL LOCATION.
4. NOTICE OF LOCATION—NECESSITY.

1. NECESSITY AND NATURE.

When a tunnel is run or constructed and a mineral vein is discovered, the tunnel owner is called upon to make a location of the ground containing the vein and thus create a mining claim.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 357.

Adams, In re, 42 L. D. 456, p. 457.

Until a discovery is made in a tunnel there is no right to locate a claim as to any vein, and the method of determining when and how it may be located can arise only upon discovery, whether such discovery be made upon the surface or in the tunnel.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 112.

Bonner v. Meikle, 82 Fed. 697, p. 699.

2. SURFACE LOCATION NOT REQUIRED.

The conditions surrounding a vein or lode discovered in a tunnel are such as naturally make against the idea or necessity of a surface location.

Campbell v. Ellet, 167 U. S. 116, p. 119.

See Butte Consol. Min. Co. v. Barker, 35 Mont. 327, p. 341.

The discovery of a vein in a tunnel worked pursuant to statutory provisions gives the tunnel owner a right to the possession of such vein or lode to the same length as if discovered from the surface, and in such case a location on the surface is not essential to a continuation of his right, if the tunnel owner complies with all local statutory provisions or mining regulations.

Campbell v. Ellet, 167 U. S. 116, p. 119.

When a tunnel owner has duly located his mining claim in compliance with the provisions of this section, he is not required to make another discovery and location of such vein or lode from the surface in order to be protected against a subsequent surface locator on the same vein or lode.

Ellet v. Campbell, 18 Colo. 510, p. 521.

This section does not provide that the discoverer of a vein in a tunnel shall make a surface location, but it declares that locations made by others on the line of a tunnel shall, under certain circumstances, be invalid, and it was the purpose of Congress to protect the discoverer of veins or lodes in tunnels.

Ellet v. Campbell, 18 Colo. 510, p. 521.

3. EXTENT AND FORM OF TUNNEL LOCATION.

The right of locating a claim to a vein arises upon its discovery in a tunnel and may be exercised by locating such claim in full length of 1,500 feet on either side of the tunnel or in such proportion thereof on either side as the locator may desire.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 113.

A tunnel claimant is entitled to a vein or lode in his tunnel for 1,500 feet in length along such vein or lode and to the extent of 300 feet on each side thereof from the middle of such vein or lode.

Hope Min. Co. v. Brown, 7 Mont. 550, p. 555.

When a vein is discovered for the first time by running a tunnel, the owner of the tunnel has the option of recording his claim of 1,500 feet all on one side of the point of discovery or intersection or partly on one and partly on the other side of it.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 113.

Corning Tunnel, etc., Co. v. Pell, 3 C. L. O. 130.

4. NOTICE OF LOCATION—NECESSITY.

The right of possession of a vein discovered in a tunnel can not be maintained without compliance with the provisions of the local statutes in reference to a record of a claim, or without posting in some suitable place conveniently near to the place of discovery a proper notice of the extent of the claim; but a notice posted at the mouth of the tunnel and properly recorded is sufficient.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 120.

When a tunnel location is made, the line thereof, upon which others are prohibited from prospecting for blind lodes, should be so established as to serve notice upon all persons attempting to make locations thereon.

Tioga Consol. Min. Co., In re, 8 C. L. O. 88, p. 89.

The proprietors of a tunnel under this section are required to give proper notice of their tunnel location at the time they enter cover by erecting a substantial post, board, or monument at the face or point of commencement and posting thereon the notice required by this section.

Hunter, In re, 5 C. L. O. 130.

Where a tunnel is run for the discovery of blind lodes, due notice thereof should be given so that others may not prospect along the line of the tunnel, but such notice is not required under the act of February 11, 1875 (18 Stat. 315).

Hoyt, In re, 8 C. L. O. 71.

On discovery of a lode by means of a tunnel the proprietor must locate his ground and post notice as if the vein were discovered from the surface.

Hunter, In re, 5 C. L. O. 130.

Goldberg v. Bruschi, 148 Cal. 708, p. 713.

SECTION 2324, REVISED STATUTES.

The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the 10th day of May, 1872, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the 10th day of May, 1872, ten dollars' worth of labor shall be performed or improvements made by the 10th day of June, 1874, and each year thereafter, for each 100 feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required hereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent coowner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his coowners who have made the required expenditures.

This section is the same as section 5, act of May 10, 1872 (17 Stat. 91) p. 678.

See 18 Stat. 61, p. 282.

- A. CONSTRUCTION OF SECTION.
- B. LOCATION AND MINING CLAIM, p. 179.
- C. STATUTORY REGULATIONS, p. 190.
- D. MINERS' RULES AND REGULATIONS, p. 192.
- E. LOCATION NOTICE OR CERTIFICATE, p. 196.
- F. RECORD OF LOCATION, p. 208.
- G. MARKING LOCATION ON GROUND, p. 213.
- H. DESCRIPTION OF LOCATION OR CLAIM, p. 225.
- I. ANNUAL LABOR OR REPRESENTATION WORK, p. 233.
- J. FORFEITURE OF CLAIM, p. 254.

K. ABANDONMENT OF CLAIM, p. 268.

L. RELOCATION OF CLAIM, p. 263.

M. COOWNERS, p. 271.

N. MINERAL SURVEYORS, p. 280.

O. JURISDICTION OF COURTS, p. 281.

P. AMENDMENTS TO SECTION, p. 281.

A. CONSTRUCTION OF SECTION.

The simple requirements of the mining statutes have led courts to regard the mining laws as beneficial and to be liberally, not technically, construed with as little differentiation as may be between former known actual customs of miners, and the formulated expressions of Congress based upon those customs is positive law.

Sanders v. Noble, 22 Mont. 110, p. 117.

The provisions of this section refer to both lode and placer claims.

Sweet v. Webber, 7 Colo. 443, p. 447.

See Jackson v. Roby, 109 U. S. 440.

Roby v. Jackson, 109 U. S. 440.

Smelting Co. v. Kemp., 104 U. S. 636.

Carney v. Arizona Min. Co., 65 Colo. 40.

The requirements of this statute are mandatory and must be strictly complied with.

Worthen v. Sidway, 72 Ark. 215, p. 222.

The locator of a mining claim loses all rights to his claim by failure to comply with this section.

Smith v. Hill, 89 Cal. 122, p. 123.

The United States mining laws are in a sense supplemental to the system that had grown up in the absence of these enactments, and in no sense did these wipe out, destroy, or essentially change the existing system, but expressly continued the same.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 588.

See Broder v. Water Co., 101 U. S. 274.

This section has no application to an option contract to purchase or develop mines in a foreign country and where there was no mineral entry under the laws of the United States.

Gaines v. Chew, 167 Fed. 630, p. 636.

Acquiescence by Congress in the construction placed upon this and the succeeding section amounts to legislative sanction, as otherwise they would have been amended so as to correct for the future any erroneous construction theretofore made.

Aurora Hill, etc., Min. Co. v. Eighty Five Min. Co., 34 Fed. 515, p. 519.

Congress has the power to impose such conditions on the right of the possession of the public lands as it may see fit, and the conditions imposed must be complied with.

Du Prat v. James, 65 Cal. 555, p. 557.

Russell v. Brosseau, 65 Cal. 605, p. 608.

See Carney v. Arizona Gold Min. Co., 65 Cal. 40.

This section must be construed in connection with section 2325, and both have reference to the possessory title of an applicant for a patent and the mode of acquiring patent for a mining claim.

Harrison, In re, 11 C. L. O. 99, p. 101.

The provisions of this section as to marking on the ground the boundary lines and as to the performance of the required labor or improvements during each year are in no wise affected by the provisions of section 2326, R. S.

Nash v. McNamara, 30 Nev. 114, p. 135.

This section regulates the manner of locating and recording and marking the boundaries of a mining claim and provides the amount of work necessary to hold its possession.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 410.

B. MINING LOCATION AND CLAIM.

1. DEFINITION—"LOCATION" AND "CLAIM" SYNONYMOUS.
2. WHAT CONSTITUTES A LOCATION.
3. DISCOVERY ESSENTIAL.
4. TIME FOR COMPLETION OF LOCATION.
5. AMENDED LOCATION.
6. RIGHT TO CHANGE SURFACE LINES.
7. CONFLICTING LOCATIONS—PRIORITY.
8. LOCATION WITHIN LIMITS OF PRIOR LOCATION—EFFECT AND VALIDITY.
9. POSSESSORY RIGHTS AND TITLE.
10. RIGHT TO MAINTAIN AND DEFEND LOCATION.
11. CONDITIONS AS TO POSSESSION AND OWNERSHIP.
12. POSSESSION WITHOUT PURCHASE.
13. MINING CLAIMS AS PROPERTY—SALE AND TRANSFER—ESTOPPEL.
14. MINING CLAIMS NOT INCLUDED IN RESERVATIONS.
15. LOCATOR'S RIGHT TO PATENT—ENTRY—PROTEST.
16. JUDICIAL NOTICE AS TO MINING LOCATIONS.

1. DEFINITION—"LOCATION" AND "CLAIM" SYNONYMOUS.

The two designations "mining claim" and "location" may be indiscriminately used to denote the same thing; but where two or more locations are combined it is then known as a claim.

Smelting Co. v. Kemp, 104 U. S. 636, p. 649.

Territory v. Mackey, 8 Mont. 168, p. 173.

A mining claim is that portion of a vein or lode and of the adjoining surface or of the surface and the subjacent material to which a claimant has acquired the right of possession by virtue of compliance with the United States Statutes and the local rules and customs of miners.

Argonaut Min. Co. v. Kennedy Min. etc., Co., 84 Fed. 1, p. 2.

See Northern Pacific R. Co. v. Sanders, 49 Fed. 129, p. 135.

Williams v. Santa Clara Min. Assn., 66 Cal. 193,

A mining claim is the name given to that portion of the public mineral lands which a miner for mining purposes takes up and holds in accordance with mining laws, local and statutory.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Ecott v. Crescent Coal, etc., Co., 56 Oreg. 190, p. 192.

See Forbes v. Gracey, 94 U. S. 762, p. 766.

Williams v. Santa Clara Min. Assn., 66 Cal. 193.

Bewick v. Muir, 83 Cal. 163.

Morse v. De Ardo, 107 Cal. 622.

Berentz v. Belmont Oil Co., 148 Cal. 577.

Salisbury v. Lane, 7 Idaho 370.

The terms "location" and "mining claim" are not always synonymous and may often mean different things, as a mining claim may refer to a parcel of land containing precious metal in its soil or rock, while location is the act of appropriating such land according to certain established rules.

Smelting Co. v. Kemp, 104 U. S. 636, p. 648.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657, p. 661.

McFeters v. Pierson, 15 Colo. 201, p. 203.

A mining claim may include as many adjoining locations as the locator can purchase, and the ground covered by all, though constituting what he claims for mining purposes will constitute a mining claim and will be so designated.

Smelting Co. v. Kemp, 104 U. S. 636, p. 649.

Carson City G., etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 664.

Good Return Min. Co., In re, 4 L. D. 221, p. 224.

2. WHAT CONSTITUTES A LOCATION.

A location is the act of taking or appropriating a parcel of mineral land.

Smelting Co. v. Kemp, 104 U. S. 636, p. 649.

A location consists in placing on the ground in some conspicuous position a notice giving the name of the locator, the fact that it is thus taken or located, with the requisite description of the extent and boundaries of the parcel of land.

Smelting Co. v. Kemp, 104 U. S. 636, p. 649.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657, p. 661.

The following steps are prerequisite to the vesting of possessory title to a lode mining claim in a locator: Discovery of a mineral-bearing lode, and the distinct marking of the boundaries of the claim so that they can be readily traced.

Erwin v. Perego, 93 Fed. 608, p. 611.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 677.

Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 216, 218.

A locator is not bound to absolute accuracy in laying out the boundaries of his claim, nor is he to lose, by way of penalty, any portion of the surface of the claim located for having included within his side boundaries more than the statute allows as lateral rights, as he is entitled, nevertheless, to hold to the limit which the law authorizes within the limits laid out and the excess is to be rejected.

McElligott v. Krogh, 151 Cal. 126, p. 132.

A location made in good faith and in substantial compliance with the provisions of this section will be upheld.

McElligott v. Krogh, 151 Cal. 126, p. 130.

A locator can not deviate materially from the plain requirements of this section and save his claim.

Parsons, In re, Sickels Min. L. & D. 48.

See France, Pontez & Co. v. Harrison (Harrington), Sickels Min. L. & D. 49.

A location which is sufficient to satisfy persons who are alone or adversely interested is sufficient to effect the full purpose contemplated by the statute.

Eaton v. Norris, 131 Cal. 561, p. 563.

A valid mining location will not be canceled for an error of an officer of the Land Department.

Rust, In re, 2 L. D. 754.

A mining location to be good must be good when made, and each claimant must stand on his own location and can take only what it will give him under the law.

Lockhart v. Farrell, 31 Utah 155, p. 159.

No definite rules can be stated by which to distinguish a speculative location from one made in good faith with a purpose to make excavations and ascertain the character of the lode or vein, with a view of making the necessary expenditures required to extract the mineral. This question must be determined by the facts of each particular case.

Erhardt v. Boaro, 113 U. S. 527, p. 536.

3. DISCOVERY ESSENTIAL.

See secs. 2319, p. 23; 2320, p. 64; 2322, p. 106; 2325, p. 239; 2330, p. 528.

The discovery of minerals within the limits of a location and the marking upon the ground so that its boundaries can be readily traced are two essential requirements to the validity of a location of a mining claim.

Miller v. Chrisman, 140 Cal. 440, p. 445.

When a mining claim is properly located this location relates back to the date of the discovery.

Doe v. Waterloo Min. Co., 70 Fed. 455, 460.

Gregory v. Bershaker, 73 Cal. 109, p. 120.

The labor to be performed or the improvements to be made as required by this section applies to a claim located, and there can be no location until there has been a discovery.

Union Oil Co., In re, 23 L. D. 222, p. 223.

Where a discoverer has himself perfected a valid location on account of his discovery no one else can have the benefit of his discovery for the purposes of location adverse to him, except as a relocater after he has lost or abandoned his prior right.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

Belk v. Meagher, 104 U. S. 279, p. 284.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 99.

The position of the discovery point alone is not sufficient to fix the extent of the surface ground, but this depends on the course of the vein or lode.

Mason, In re, 8 C. L. O. 104.

4. TIME FOR COMPLETION OF LOCATION.

Locators are entitled to a reasonable time after posting their notice in which to establish the exterior boundaries of their claims, and 20 days is a reasonable time.

Doe v. Waterloo Min. Co., 55 Fed. 11, p. 15.

A reasonable time is afforded after discovery to complete a mining location in order to eliminate, so far as circumstances will permit, guesswork in the location of quartz lodes.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 460.

Whenever preliminary work is required to define and describe the claim located, the original locator must be protected in the possession of his claim until sufficient excavations and development can be made so as to justify the necessary work to extract the metal. Otherwise the purpose of allowing free exploration would be defeated, and force and violence in the struggle for possession would determine the rights of the claimants.

Erhardt v. Boaro, 113 U. S. 527, p. 535.

Doe v. Waterloo Min. Co., 55 Fed. 11, p. 15.

While 20 days is not an unreasonable time to give a locator in which to locate his claim after the discovery of a vein, yet what would be a reasonable time for such com-

pletion may depend upon the circumstances affecting the ability of the locator to properly define his claim, and sickness may be classed as such a circumstance.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 460.

Jones v. Anderson, 82 Ala. 302.

Bramlett v. Flick, 23 Mont. 95, p. 110.

See Omar v. Soper, 11 Colo. 380.

Sanders v. Noble, 22 Mont. 110.

Gleeson v. Martin White Min. Co., 13 Nev. 442.

It seems to have been the intention of Congress to sanction some rules in force among miners on the Pacific coast, under which the posting of a notice would hold a claim on a vein a reasonable time, during which the locator might make a survey with reference to natural objects or permanent monuments in order to obtain a sufficient description of the locus of his claim and to hold the claim until the vein was so far developed as to admit of an accurate establishment of the surface lines.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 329.

See Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 460.

5. AMENDED LOCATION.

A mining location may be amended without the forfeiture of any rights acquired by the original location except such as are inconsistent with the amendment, but no new right can be had which is inconsistent with those acquired by other locations made between the dates of the original and such amended location, and an amended location is valid as against any locations made after its date.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 134 Fed. 268, p. 270.

A person who has parted with his title to a mining claim can not make an amended location.

Gray Copper Lode, In re, 18 L. D. 536.

The amended location authorized by the statute of Colorado (sec. 3160, Mills Annotated Statutes) is essentially different from this section and is made in furtherance of the original location and for the purpose of giving additional strength or territorial effect thereto, while the relocation under this section is a new and independent location and can only be made where the original location and all rights thereunder have been lost by failure to make the necessary annual expenditure.

Teller, In re, 26 L. D. 484, p. 486.

A title acquired by original location of a mining claim can not be divested by leaving out of the certificate of the amended location the name of such original locator unless done with his knowledge and consent.

Auerbach, In re, 29 L. D. 208, p. 210.

A claimant's rights under amended mineral locations depend upon his ownership of the original locations, and if at that time they were owned or partly owned by others their title was not divested or lost by the amended location.

Teller, In re, 26 L. D. 484, p. 486.

6. RIGHT TO CHANGE SURFACE LINES.

The locator's rights are to be determined by the lines of his surface location and these lines can not be subsequently changed so as to interfere with the rights of other persons.

Tyler Min. Co. v. Sweeney, 54 Fed. 284, p. 291.

It is the policy of the Government to encourage its citizens in searching for and developing the mineral resources of the country, and this policy can be best subserved

by permitting a discoverer to correct and readjust his lines whenever he desires to do so, provided he does not interfere with or impair the intervening rights of others.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 396.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 400.

7. CONFLICTING LOCATIONS—PRIORITY.

Where the locator of a mining claim failed, after posting a notice upon the ground, to comply with the statute in completing his location, and subsequently a conflicting location was made, the area in conflict did not revert to the public domain but inured to the benefit of a junior locator who, by the performance of the statutory assessment work, was entitled to the possession of such conflict ground.

Helena Gold, etc., Co. v. Baggaley, 34 Mont. 464, p. 473.

Following Lavagnino v. Uhlig, 198 U. S. 443.

See Street v. Delta Min. Co., 42 Mont. 371, p. 381.

In a controversy as to the right of possession of a mining claim, the claimant who has complied with the requirements of the law and was prior in time is the question to be determined and not which, on the whole, had the better right.

Funk v. Sterrett, 59 Cal. 613, p. 614.

Mining locations are generally made upon lands open and uninclosed and are difficult of actual occupation. The limits of possessory rights are vague and uncertain and the validity of apparent locations uncertain and doubtful. Under such circumstances conflicting and overlapping locations are frequent, and while in controversies affecting such locations the rights of the first locator to the surface, as well as to the veins and lodes within his lines, are respected, there is no good reason why all subsequent locations should be held absolutely void for all purposes; and if the rights of the first locator are not infringed such second locator should be entitled to all the benefits which the statute gives to the making of such a claim, and he is not required to make a relocation for the purpose of obtaining the amount of surface to which he is entitled.

Del Monte Min., etc., Co. v. Last Chance Min. Co., 171 U. S. 55, p. 83.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 541.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min. Co., 131 Fed. 591, p. 601.

The location of a vein or lode as running in a certain direction and not marked on the surface for years, but simply indicated by a notice, will not prevail as against a claim subsequently located by another party on ground different from the first, as indicated, after the latter has been developed by years of labor and large expenditures, without objection by the first locator, where by subsequent exploration the vein or lode of the first locator runs in a different direction from what he supposed and in its true course covers the subsequent claim.

O'Reilly v. Campbell, 116 U. S. 418, p. 422.

See Biglow v. Conradt, 3 Alaska 134, p. 140.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 80 (dissenting opinion).

A subsequent locator has no rights to conflicting ground as against a prior location made in substantial compliance with this section.

Argentine Min. Co. v. Benedict, 18 Utah 183, p. 188.

A vein or lode is known to exist when the boundaries of the claim are specifically marked on the surface so as to be readily traced, and notice of location is recorded in the proper records, though personal knowledge of the fact may not be possessed by another.

Pacific Slope Lode, In re, 12 L. D. 686, p. 687.

See Noyes v. Mantle, 127 U. S. 348, as to same point.

Van Ness v. Rooney, 160 Cal. 131, p. 138.

8. LOCATION WITHIN LIMITS OF PRIOR LOCATION—EFFECT AND VALIDITY.

The validity of a location made within the limits of a prior location is determined by ascertaining the status of such prior location at the time the second location was made, and if the required assessment work has not been performed, and such subsequent location made, before the original locator has assumed work on his claim, then such subsequent location will prevail.

Branagan v. Dulaney, 2 L. D. 744.

Third persons can not make a valid location of a mining claim upon ground already occupied and duly located as a mining claim.

Holdt v. Hazard, 10 Cal. App. 440, p. 444.

The locator of a mining claim is not called upon to furnish any facts or data relative to a previous location upon the same ground, and no inquiry should be instituted relative to antecedent matters except upon showing of the irregularity and of injury to material interests, but the determination of such matters is provided for in the law applicable to adverse claims.

Peck, In re, 10 C. L. O. 119.

The entry by a locator upon an existing claim then being worked for the purpose of setting stakes or erecting monuments, though without opposition, gives no rights to such locators as to the part or ground thus overlapped.

Biglow v. Conradt, 159 Fed. 868, p. 870.

9. POSSESSORY RIGHTS AND TITLE.

While this section protects rights or interests in mining property acquired under existing laws, yet other sections of the act provide the mode and manner in which such rights shall be asserted and secured by adversary proceedings, and a failure so to assert prior rights is treated as a waiver.

Lee v. Stahl, 9 Colo. 208, p. 211.

See *Hall v. Equator Mining, etc., Co.*, 11 Fed. Cas. 222.

The right of possession of a mining claim comes only from a valid location, and if there is no location there can be no possession.

Belk v. Meagher, 104 U. S. 279, p. 284.

Zeiger v. Dowdy, 13 Ariz. 331, p. 335.

Hamilton v. Huson, 21 Mont. 9, p. 11.

Patterson v. Tarbell, 26 Oreg. 29, p. 35.

Overgaard v. Westerberg, 3 Alaska 168, p. 179.

Cascaden v. Bortolis, 3 Alaska 200, p. 204.

See *Belk v. Meagher*, 3 Mont. 80.

Hopkins v. Noyes, 4 Mont. 550, p. 556.

Garfield, etc., Min. Co. v. Hammer, 6 Mont. 53.

Heine v. Roth, 2 Alaska 416, p. 424.

Steele v. Tanana Mines R. Co., 2 Alaska 451, p. 456.

By this section Congress has given the right of location upon the public mineral lands, but it can only be exercised within the statutory limits, and a location can only be made in the manner permitted by the statute.

Belk v. Meagher, 104 U. S. 279, p. 284.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 78.

Malone v. Jackson, 137 Fed. 878, p. 881.

Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 97.

This section makes the possession of that part of the public lands which is valuable for minerals separable from the fee, and provides for the existence of the exclusive right to the possession while the legal title remains in the United States.

Belk v. Meagher, 104 U. S. 279, p. 283.

Teller v. United States, 113 Fed. 273, p. 281.

Burke v. McDonald, 2 Idaho 310, p. 313.

This section does not provide for the acquisition of title to mineral lands; it merely prescribes certain methods by which a locator can gain and hold possession of a mining claim. This possessory title alone is the conditional one.

Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428, p. 431.

This section has reference solely to title by right of possession and does not in any way conflict with titles acquired by purchase, but this right of possession depends on the performance of certain acts in the nature of conditions precedent, before an entry can be made, and the validity of an entry depends upon the facts existing at the time it is made and not upon anything which the claimant may do or omit to do afterwards.

Harrison, In re, 11 C. L. O. 99, p. 100.

See *American Hill Quartz Mine, In re, Copp's Min. Lands* 237.

This section refers to title by right of possession and has nothing to do with titles acquired by purchase, and this possessory title is the lowest grade of title known to the mining law, while the next is the equitable title accruing upon purchase and entry, and the third is acquired by patent, and this merges both the possessory and equitable titles.

Smith v. Van Clief, 6 C. L. O. 2, p. 3.

Under this section a mining claimant can show a right to the possession of a mining claim, prior to the issuance of a patent, only by showing an actual possession of the claim, as against a mere wrongdoer, or by showing compliance with the requisites of the statute.

Funk v. Sterrett, 59 Cal. 613, p. 614.

Russell v. Brosseau, 65 Cal. 605, p. 609.

Patterson v. Tarbell, 26 Oreg. 29, p. 36.

See *Garthe v. Hart*, 73 Cal. 541, p. 543.

Gregory v. Perabaker, 73 Cal. 109.

Patchen v. Keeley, 19 Nev. 404, p. 413.

The annual expenditure required by this section is necessary to the continued maintenance of the possessory title of a mining claim.

Copper Glance Lode, In re, 29 L. D. 542, p. 545.

The possessory right under this section may continue for an indefinite time and can only be terminated by the failure of the locator or coowner to comply with the statute and a relocation of the claim by another, but the mining laws do not require a person in possession to purchase the land from the Government, and if he complies with the law relating to possessory rights, his title is as good as if secured by patent.

Mason v. Washington—Butte Minn. Co., 214 Fed. 32, p. 35.

Smith v. Van Clief, 6 C. L. O. 2, p. 3.

The mining statutes provide for an exclusive right of possession in a locator while the paramount title remains in the United States.

Phoenix Min., etc., Co. v. Scott, 20 Wash. 48, p. 50.

See *Belk v. Meagher*, 104 U. S. 279.

Mercedes Min. Co. v. Fremont, 7 Cal. 317.

McKeon v. Bisbee, 9 Cal. 137.

The possession by which mining claims are held is regulated and defined by usage and local conventional rules, and the actual possession applied to agricultural lands can not be required of mining claims.

Roberts v. Wilson, 1 Utah 292, p. 295.

See *Attwood v. Fricot*, 17 Cal. 38.

Possession of part of a mining claim obtained pursuant to mining rules and customs is the possession of the entire claim.

Roberts v. Wilson, 1 Utah 292, p. 295.

See *Attwood v. Fricot*, 17 Cal. 38.

So long as the locator complies with the statutory requirements and performs the assessment work he is entitled to hold and enjoy his possession as against all the world, subject to the paramount sovereignty of the United States.

Gillis v. Downey, 85 Fed. 483, p. 487.

Before the enactment of the mining laws it was the rule that when a notice was posted and the boundaries marked possession extended to the entire limits, though the location was not made in strict compliance with the prescribed local rules, and the rule has been applied since the enactment of the mining laws by Congress.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 15.

Attwood v. Fricot, 17 Cal. 38.

English v. Johnson, 17 Cal. 108.

See Field v. Grey, 1 Ariz. 404.

Lincoln Lucky & Lee Min. Co. v. Hendry, 9 N. Mex. 149.

This section provides generally and fully the method of marking a mining claim and prescribing the work and improvements necessary to be made to give a possessory right to a mining claimant.

Wright v. Killian, 132 Cal. 56, p. 58.

A person in possession of a mining claim in a mining district is presumed to be the owner until the contrary is shown, and possession of a mining claim under color of title in pursuance of law and the local rules and regulations of a mining district for more than 20 years segregates the land from the public domain and prevents it from being opened for or to location.

Risch v. Wiseman, 36 Oreg. 484, p. 486.

See Cullacott v. Cash Gold, etc., Min. Co., 8 Colo. 179.

Gropper v. King, 4 Mont. 367.

As no time is prescribed within which a mineral claimant shall make application for patent his possession may in time ripen into a perfect right.

Lebanon Min. Co. v. Consolidated Republican Min. Co., 6 Colo. 371, p. 381.

See Harris v. Equator Min., etc., Co., 3 McCrary, 14.

Armstrong v. Lower, 6 Colo. 581, p. 583.

See sec. 2332 R. S., p. 547.

10. RIGHT TO MAINTAIN AND DEFEND LOCATION.

Possession of a part of a mining claim gives the right of possession to the whole.

Bulette v. Dodge, 2 Alaska 427, p. 431.

See Campbell v. Rankin, 99 U. S. 261, p. 262.

English v. Johnson, 17 Cal. 108.

In an action for possession of a mining claim the location is the plaintiff's title, and if it is good he can recover; if bad, he can not.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

Overgaard v. Westerberg, 3 Alaska 168, p. 179.

Cascaden v. Bortolis, 3 Alaska 200, p. 204.

A person in the actual possession of a valid claim is entitled to maintain that possession and to exclude every other person from trespassing thereon and no one is at liberty to forcibly disturb his possession or enter upon the premises.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 83.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 541.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 601.

In order to maintain a right to a mining claim after it is acquired, the locator must continue substantially to comply with the laws of Congress and with the valid laws of the State, and the valid rules established by the miners in the district, and a failure

to do either will work a forfeiture whether the laws and rules provide for forfeiture from noncompliance or not.

Zerres v. Vanina, 134 Fed. 610, p. 617.
 Mallet v. Uncle Sam Min. Co., 1 Nev. 188.
 Oreamuno v. Uncle Sam Min. Co., 1 Nev. 215.
 Sison v. Sommers, 24 Nev. 379, p. 387.

A person holding a mining claim by mere right of possession, while on the one hand not receiving that enlarged power incident to a valid mining location, and on the other hand being subject to intrusion by the lawful proprietor of a vein or lode which may in its downward course penetrate his claim, holds his claim in other respects with and subject to the incidents of possession at common law, and may defend such possession of the surface and of the segment of the earth included within the surface lines extending vertically downward, with all that it contains, against any one not claiming under superior title.

Richmond Silver Min. Co. v. Davy, 10 C. L. O. 291.

An action of ejectment will lie between rival claimants of mineral lands and an action may be brought before any attempt is made to procure a patent, and it may be maintained by an alien or by one who has declared his intention to become a citizen.

Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 451.
 See McKinley Creek Min. Co. v. Alaska United States Min. Co., 183 U. S. 563, p. 572.

In an action for the possession of a mining claim where the defendant is in actual possession the burden is upon the plaintiff to show that the prior location was made and perfected in compliance not only with the United States statutes, but also with any provisions of the statutes of the State not inconsistent with the United States statutes.

Copper Globe Min. Co. v. Allman, 23 Utah 410, p. 417.
 Van Zandt v. Argentine Min. Co., 8 Fed. 725.
 See Sweet v. Webber, 7 Colo. 443, p. 450.
 Bryan v. McCaig, 10 Colo. 309.
 McCowan v. Maclay, 16 Mont. 234.
 Hopkins v. Noyes, 4 Mont. 550.

11. CONDITIONS AS TO POSSESSION AND OWNERSHIP.

The law does not require the locator of a mining claim to remain in the actual physical possession thereof at all times, but it does require him to do a certain amount of work annually in lieu of such continued possession.

Gowdy v. Kismet Gold Min. Co., 22 L. D. 624, p. 628.

A mining claim, until patent therefor has been issued, is held by a peculiar title, which is never complete and absolute, and which can only be maintained by the annual expenditure thereon of the work as required by law.

El Paso Brick Co. v. McKnight, 233 U. S. 250, p. 256.
 Bay State Silver Min. Co. v. Brown, 21 Fed. 167, p. 168.

A claimant of mining ground, until patent is issued, must be an actor and must annually perform the statutory work required, and in establishing his title to such claim he must show compliance with the statute in this respect.

Bay State Silver Min. Co. v. Brown, 21 Fed. 167, p. 168.
 Distinguished in Aurora Hill, etc., Min. Co., v. Eighty-Five Min. Co., 34 Fed. 515, p. 519.

The mere possessory title given by this section is subject to be defeated, on failure to make the specified annual expenditures, by a location of another person.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.

Development by the working of mining claims has always been regarded as the condition of continued ownership until a patent is obtained.

Erhardt v. Boaro, 113 U. S. 527, p. 535.

A valid title or possessory right to a mining claim can not be established without proof of compliance with the local rules and regulations of miners as well as with Federal and State statutes.

Becker v. Pugh, 9 Colo. 589, p. 590.

See *Sullivan v. Hense*, 2 Colo. 424.

Consolidated Republican Mtn. Min. Co. v. Lebanon Min. Co., 9 Colo. 343.

Bryan v. McCaig, 10 Colo. 309.

Evidence in support of the possession of a mining claim must show the performance of the assessment work as required by this section.

Rosenthal v. Ives, 2 Idaho 244, p. 247.

A locator is not required to sink a shaft on each location in a consolidated mining claim within the meaning of this section where one shaft will suffice for all the locations.

Smelting Co. v. Kemp, 104 U. S. 636, p. 655.

Union Oil Co., In re, 23 L. D. 222, p. 225.

12. POSSESSION WITHOUT PURCHASE.

This section provides for the right of possession of a mining claim without purchase.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.

The locator of a mining claim may hold it under the possessory right given by this section, or he may purchase the land within the boundaries of his claim on full compliance with the mining laws, but he is not compelled to do so.

Smith v. VanClief, 6 C. L. O. 2.

Seaton Min. Co. v. Davis, *Copp's Min. Lands* 296, p. 298.

The Government gives the locator and possessor of a lode his choice to hold it without patent on certain conditions or to take a patent.

Branagan v. Dulaney, 2 L. D. 744, p. 751.

Black Queen Lode v. Excelsior No. 1 Lode, 22 L. D. 344.

Permission is given and the terms prescribed upon which the locators of mining claims may purchase the property, but they are not compelled to do so.

Black v. Elkhorn Min. Co., 52 Fed. 859, p. 860.

See *Forbes v. Gracey*, 94 U. S. 762.

Where possession alone is relied upon it must be actual and connected with active diligent work of exploration with a bona fide intention in case mineral is found to make a location.

Whiting v. Straup, 17 Wyo. 1, p. 23.

See *Miller v. Chrisman*, 140 Cal. 440.

New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211.

13. MINING CLAIMS AS PROPERTY—SALE AND TRANSFER—ESTOPPEL.

The possessory right to a mining claim on partial performance of the conditions imposed by this section is real estate and passes to the heir, is subject to seizure and sale, may be conveyed by deed, and is subject to partition as other real estate.

Aspen Min., etc., Co. v. Rucker, 28 Fed. 220, p. 222.

The provisions of this section are of themselves conclusive that the locator's interest in a mining grant is salable and transferable.

Smelting Co. v. Kemp, 104 U. S. 636, p. 651.

A purchaser of a lode claim from the original locator is entitled to all the mineral veins and lodes within the limits of the claim, and of the benefits of the expenditures

made by the grantor for its development, and this right is not defeated by a subsequent amended location and a change in the name of the mining claim.

Tam v. Story, 21 L. D. 440, p. 443.

A person locating a mining claim in accordance with the provisions of this section is, after a sale and transfer of such claim to a third person, estopped from denying that he was the owner of and entitled to the possession of such claim when transferred to such third person, and is also estopped from denying that he had located the claim in accordance with the statute.

Belcher Consol. Gold Min. Co. v. Defarrari, 61 Cal. 160, p. 162.
Stinchfield v. Gillis, 96 Cal. 33, p. 36.

14. MINING CLAIMS NOT INCLUDED IN RESERVATIONS.

Mining claims to which miners have acquired possessory rights under this and other sections of the mining law can not be included in military reserves subsequently established, and their inclusion in such reserve would not divest the owners of their rights.

Reservation of Land, In re, 17 Op. Atty. Genl. 232, p. 233.

15. LOCATOR'S RIGHT TO PATENT—ENTRY—PROTEST.

A locator or owner of a mining claim acquires a vested right in the land, of which he can not be divested, at the date when he fulfills the requirements of law, submits his final proof, pays the purchase money, and receives a patent certificate, and this is the point of time when the right of property leaves the Government and vests in him, and the delay in preparation and delivery of patent does not abridge his rights or increase his duty.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.
See Smith v. VanClief, 6 C. L. O. 2.

An entry of a mining claim duly made is in all respects equivalent to a patent issued so far as third persons are concerned.

Smith v. Van Clief, 6 C. L. O. 2, p. 3.
See Harrison, In re, 11 C. L. O. 99, p. 101.
American Hill Quartz Mine, In re, 5 C. L. O. 114.

The sections of the statute relating to proceedings upon applications for patent are for the purpose of enabling claimants to obtain a final grant of the legal title from the Government for ground previously acquired and to avoid the necessity of doing annual work.

Nash v. McNamara, 30 Nev. 114, p. 137.

Third persons may appear as protestants to show that the applicant has failed to comply with the terms of the law and is not entitled to a patent, but the statute does not limit the appearance of such third persons to the Land Department, and accordingly a third person may intervene in a suit between an adverse claimant and the applicant for mineral patent.

Nome-Sinook Co. v. Simpson, 1 Alaska 578, p. 590.
See Gavigan v. Crary, 2 Alaska 378.
Bechtol v. Bechtol, 2 Alaska 397.

16. JUDICIAL NOTICE AS TO MINING LOCATIONS.

Courts take judicial notice of the general method and rules of locating and marking mines upon the public domain in Alaska that are widespread and well known and fixed in the mining system, and that the first discovery is known as the "discovery claim," and that claims within a gulch or on a stream are numbered from the discovery claim up or down the gulch or stream.

Butler v. Good Enough Min. Co. 1 Alaska 246, p. 249.

C. STATUTORY REGULATIONS.

1. STATE REGULATIONS PERMITTED.
2. STATUTORY REGULATIONS—INSTANCES.

1. STATE REGULATIONS PERMITTED.

This section makes the manner of locating mining claims and recording them subject to the local laws and the rules and regulations of each mining district.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 346.

This section permits State legislatures to enact regulations governing mining claims not in conflict with the United States statutes, and States and miners of a mining district may make regulations supplementing the provisions of the United States statutes.

Clason v. Matko, 223 U. S. 646, p. 654.

See *Butte City Water Co. v. Baker*, 196 U. S. 119.

A State legislature may impose additional burdens on the locator of a mining claim either as a requirement that the work shall be made as an incident to the location or as a condition to the subsistence of the same.

Northmore v. Simmons, 97 Fed. 386, p. 387.

This and the two following sections simply embody the prominent features of the mining system of asserting rights in courts under the local rules of miners and the laws of the States and Territories.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 8 C. L. O. 173, p. 174.

See *Broder v. Water Co.* 101 U. S. 274.

This section was not intended to interfere with the rights of the State or of local mining districts, but was intended to express the most liberal terms on which the United States would part with its right in mining claims, and no State or local mining regulation can grant more favorable terms than those demanded by this statute, but either may impose additional burdens.

Northmore v. Simmons, 97 Fed. 386, p. 388.

Erhardt v. Boaro, 113 U. S. 527.

State statutes requiring locators of lode claims to set center and end posts or monuments in a particular manner, and to attach to the copy of the location notice filed with the county clerk an affidavit of proof of representation work as conditions precedent to the establishment of a mining claim, are not in conflict with this section of the statute.

Wright v. Lyons, 45 Oreg. 167, p. 173.

See *Northmore v. Simmons*, 97 Fed. 386.

Beals v. Cone, 27 Colo. 473.

Metcalf v. Prescott, 10 Mont. 283.

McCowan v. Maclay, 16 Mont. 234.

Sisson v. Sommers, 24 Nev. 379.

While a State, Territory, or District may require more improvements or greater expenditures than that required by this section, yet neither can make a less requirement control, as this would be in conflict with the United States mining laws.

Wheeler, In re, 7 C. L. O. 130.

This section makes the manner of locating mining claims and recording them subject to the laws of the State or Territory and the regulations of mining districts when not in conflict with the United States statutes.

Kendall v. San Juan Min. Co., 144 U. S. 658, p. 664.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 678.

This section permits State and local laws and rules regulating the location of mining claims, and the only limitation prescribed is that they shall not conflict with the paramount law providing for disposal of the public mineral domain.

Wright v. Lyons, 45 Oreg. 167, p. 172.

The right of the States to pass acts supplementing the mining acts of Congress in respect to the location of mining claims is recognized by this section.

Copper Globe Min. Co. v. Allman, 23 Utah 410, p. 417.

Local statutory regulations supplemental to and not inconsistent with the Federal mining laws are valid and must be complied with, and a failure to substantially comply with them renders the location void.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 126.

See *Lockhart v. Johnson*, 181 U. S. 516.

Lockhart v. Wills, 9 N. Mex. 344.

Deeney v. Mineral Creek Mill. Co., 11 N. Mex. 279.

The legislature of a State or Territory can add further requirements as to the record of notices of location.

O'Donnell v. Glenn, 8 Mont. 248, p. 254.

See *Hoyt v. Russell*, 117 U. S. 401, p. 405.

Wenner v. McNulty, 7 Mont. 30, p. 36.

2. STATUTORY REGULATIONS—INSTANCES.

A State requirement that a discovery shaft shall be sunk or such a shaft to be known by any other name as a condition for the location of a mining claim or the continued right of possession of the same is not in conflict with this section.

Northmore v. Simmons, 97 Fed. 386, p. 387.

Local laws may require expenditures to be made in a certain manner and within certain periods not named and not in conflict with the United States laws.

Wheeler, In re, 7 C. L. O. 130, p. 132.

A local statute requiring a record of a lode claim to be filed in the recorder's office of the proper county within 20 days after the location in no way adds to the requirements of the acts of Congress.

Flick v. Gold Hill & Lee Mtn. Min. Co., 8 Mont. 298, p. 302.

United States v. Ringeling, 8 Mont. 353, p. 359.

The statute of Colorado giving a locator 60 days for marking the boundaries of his claim until explorations can be made to ascertain the course and direction of the vein, and giving 30 days thereafter for the preparation of the proper certificate of location to be recorded is valid.

Erhardt v. Boaro, 113 U. S. 527, p. 536.

Iron Silver Min. Co. v. Elgin, 118 U. S. 196, p. 206.

Sanders v. Noble, 22 Mont. 110, p. 125.

Patterson v. Tarbell, 26 Oreg. 29, p. 37.

Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350, p. 360.

See *Omar v. Soper*, 11 Colo. 380.

Gleeson v. Martin White Min. Co., 13 Nev. 444.

The statute of the Territory of Dakota requires, in addition to the provisions of this section, that the discoverer shall within 60 days from the date of the discovery record his claim.

Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350, p. 363.

The regulations of the Montana Code (sec. 3612) are not invalid as being either too stringent or in conflict with this section of the United States statutes.

Butte City Water Co. v. Baker, 196 U. S. 119, p. 129.

The statutory requirement of the State of New Mexico is similar to those of this section, with the addition that the notice shall contain a statement of the intention to locate, and while this section does not require record of a mining notice, yet when the same is required by local legislation or regulations of miners, then the requirements of this section become operative and imperative.

Deeney v. Mineral Creek Mill. Co., 11 N. Mex. 279, p. 291.

See Faxon v. Barnard, 4 Fed. 702.

Lockhart v. Wills, 9 N. Mex. 344, p. 357.

Mallett v. Uncle Sam Gold, etc., Min. Co., 1 Nev. 188.

The miner must have ample opportunity to perfect his location, so that he may be protected in the full enjoyment of the rights accorded him by the statute; and for this purpose State statutes were passed postponing the necessity for marking the boundaries of his claim until he could have full opportunity to ascertain the strike or course of the vein or lode which he has discovered, and the local statute of Montana gives him 90 days in which to do this.

Sanders v. Noble, 22 Mont. 110, p. 135.

The object of the State statute permitting certain designated time in which to sink a shaft and make a discovery of mineral is for the purpose of permitting the locator to discover the course of the vein or lode in order to complete his location, and he is protected in his possession during the statutory period if he puts up a stake at the discovery point, giving the name of the lode, date of discovery, and notice of his intention to locate the claim; and this is equivalent to actual possession for the statutory period within which he must sink his discovery shaft to a depth of 10 feet, make a survey, mark the lines, and make formal location.

Sanders v. Noble, 22 Mont. 110, p. 120.

See Erhardt v. Boaro, 8 Fed. 692.

Armstrong v. Lower, 6 Colo. 581.

D. MINERS' RULES AND REGULATIONS.

1. MINERS PERMITTED TO MAKE RULES AND REGULATIONS.
2. MINING DISTRICTS.
3. CUSTOMS—PROOF AND PRESUMPTIONS.
4. REGULATIONS AS TO AMOUNT OF WORK.
5. REGULATIONS AS TO LOCATION, RECORD AND NOTICE.
6. VIOLATIONS OF REGULATIONS—EFFECT.

1. MINERS PERMITTED TO MAKE RULES AND REGULATIONS.

The miners in their respective districts are permitted to make rules and regulations not in conflict with the laws of the United States or of the local State or Territory governing the location, manner of recording, and amount of work necessary to hold possession of the claim.

Jackson v. Roby, 109 U. S. 440, p. 441.

Erhardt v. Boaro, 113 U. S. 527, p. 535.

Ducie v. Ford, 138 U. S. 587, p. 591.

Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428.

Del Monte Min., etc., Co. v. Last Chance, etc., Min. Co., 171 U. S. 55, p. 71.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 587.

Butte City Water Co. v. Baker, 196 U. S. 119, p. 122.

Creede & Cripple Creek, etc., Min. Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 346.

Yosemite Min. Co. v. Emerson, 208 U. S. 25, p. 29.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 459.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 204.

County of Kern v. Lee, 129 Cal. 361, p. 362.

O'Donnell v. Glenn, 8 Mont. 248, p. 258.

This section authorizes the miners of each mining district to make rules and regulations not in conflict with the United States statutes governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, and providing that the location must be marked on the ground so that its boundaries can be traced; and the record of a mining claim must contain the date of the location, the name of the locator, and a sufficient description as will identify the same, and the performance of one hundred dollars' worth of work, but where claims are held in common the expenditure may be made upon any one claim.

Chapman v. Toy Long, 5 Fed. Cas. 497.

Gird v. California Oil Co., 60 Fed. 531, p. 532.

Gillis v. Downey, 85 Fed. 483, p. 487.

The rules and regulations adopted by the miners of a mining district, if not in conflict with United States or State statutes, where authorized and sanctioned by express statutory enactment, are, as to such district, as valid and binding as if a part of the statute itself.

Gird v. California Oil Co., 60 Fed. 531, p. 534.

Under the authority of this section miners may make rules not in conflict with the United States statute prescribing the time to be allowed for tracing the course of his vein before defining his surface claim, and he may be allowed a reasonable time for such tracing.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 460.

See Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 329.

The language of the statute authorizing miners to make regulations governing the location and manner of recording mining claims implies that the act of location is distinct and different from the act of recording, except in districts where the rules and regulations of the miners make the recording one of the acts of location.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 679.

It is not necessary in order to acquire title to mining claims that mining districts should be organized and local rules and regulations adopted, but in the absence of local rules compliance with the United States statutes is sufficient; but miners in their respective districts may adopt rules and regulations exacting from locators and owners of mining claims something more than is required by the United States statutes.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 323.

2. MINING DISTRICTS.

The term "mining district" means a section of country usually designated by name and described or understood as being confined within certain natural boundaries in which gold or silver may be found in paying quantities.

United States v. Smith, 11 Fed. 487, p. 490.

The organization of mining districts is entirely optional with the miners, as there is no law requiring such organizations.

Rose No. 1, etc. Lode Claim, In re, 22 L. D. 83, p. 85.

3. CUSTOMS—PROOF AND PRESUMPTIONS.

A custom to record the notice of a mining location and the place of such record to be binding should be so well known, understood, and recognized in the district that locators should have no reasonable ground for doubt as to what is required to make and preserve a valid location.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 678.

If a rule or custom of miners in a certain mining district requires mining claims to be recorded, then a claim located during the existence of such rule or regulation must be recorded in order to be valid.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 533.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 678.

The right of possession may be determined by local customs and rules without involving any question under the United States statutes.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 508.

A regulation of miners in a mining district may be evidenced by a written rule or by a specific custom, though not in writing.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 459.

Flaherty v. Gwinn, 1 Dak. 509.

Harvey v. Ryan, 42 Cal. 626.

In the absence of proof of local rules and regulations adopted by miners a court will not presume that any such rules or regulations have been adopted.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 323.

Where there is no local rule limiting or defining the size of mining claims the question of the reasonable size must be determined by a general custom, which may be proved.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 459.

Table Mountain Tunnel Co. v. Stranahan, 20 Cal. 198.

While this section permits the miners of each mining district to make regulations governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, yet if such local rules and regulations are not produced and admitted in evidence they can not be considered.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.

Where no mining rules or customs are shown to exist under which a mining location was made and claimed, the party so claiming can, as against another locator not claiming under mining rules, hold his prior location, if his boundaries were distinctly defined by physical marks, without proving local customs or rules.

Roberts v. Wilson, 1 Utah 292, p. 296.

See English v. Johnson, 17 Cal. 108.

4. REGULATIONS AS TO AMOUNT OF WORK.

The amount of work required by local rules and regulations of miners to be done on a mining claim can only be regulated by increasing the amount over that named in the statute, as the diminution of it is expressly prohibited; hence miners may regulate such amount by increasing it only, and the time may be abridged within which a portion of it may be done, and other regulations may be required to be complied with within a shorter time than the year.

Northmore v. Simmons, 97 Fed. 386, p. 387.

See Original Co., etc. v. Winthrop Min. Co., 60 Cal. 631.

Sweet v. Webber, 7 Colo. 443.

The requirements of local rules and regulations of miners as to the amount of work necessary to be done on mining claims are always subject to the provisions of the United States statute that at least the expressed yearly amount or improvement must be expended on the claim, and that at most the time for expending the same shall not be extended beyond the designated year.

Northmore v. Simmons, 97 Fed. 386, p. 387.

A rule or custom of miners can not authorize a less annual expenditure on a mining claim than is required by this section of the statute.

Penn v. Oldhauber, 24 Mont. 287, p. 290.

See *Sweet v. Webber*, 7 Colo. 443.

Jackson v. Roby, 109 U. S. 440.

Chambers v. Harrington, 111 U. S. 350.

A regulation of a local mining association to the effect that in doing assessment work in a particular district there should be allowed \$5 per day can not prevail as against the positive requirements of the United States statute, and mere proof of the performance of 20 days' work on a mining claim is not sufficient where the proof shows that the work did not exceed \$10 in value.

Woody v. Barnard, 69 Ark. 579, p. 580.

See *Bradley v. Lee*, 38 Cal. 362.

5. REGULATIONS AS TO LOCATION, RECORD, AND NOTICE.

If the local laws or regulations of miners do not provide for records of mining claims, then no such record is necessary; but if they so provide, then such record under this statute must contain an accurate description of the locus of the claim by reference to natural or permanent monuments.

Fuller v. Harris, 29 Fed. 814, p. 818.

Golden-Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312.

Under a rule of the miners giving each locator of a vein 200 feet, together with the dips, spurs, angles, and all the minerals contained therein, a locator, by putting up his stake with the proper notice of the number of feet claimed on the lode and with his name, becomes by virtue of such location invested with the right to hold 100 feet on each side of the vein or lode thus located.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Regulations are valid which require that in the location notice reference must be made giving the course and distance, as nearly as practicable, from the discovery shaft to permanent and well-known points.

Tennessee Lode, In re, 7 L. D. 392, p. 393.

The act of Congress does not in express terms require the posting or registration of a notice, but recognizes the power of miners to require registration by providing that all records of mining claims shall contain certain stated matters.

Gregory v. Pershbaker, 73 Cal., 109, p. 118.

Where local regulations of a mining district have made the posting and recording of location notice essential, the courts are not at liberty to dispense with them.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 464.

Under the rules and regulations of well-known mining districts a person may acquire the exclusive right of possession of a mining claim, at least as against other persons having actual notice of the claim, its position, and extent, before recording such location.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 680.

6. VIOLATIONS OF REGULATIONS—EFFECT.

The United States mining laws confer upon the miners of each mining district the right to make regulations not inconsistent with the United States laws, or with the laws of the State or Territory governing the location, manner of recording and amount

of work necessary to hold possession of a mining claim, and locations of such claims which fail to conform to these requirements are illegal.

Chavanne, In re, 7 C. L. O. 115.

Taylor, In re, 9 C. L. O. 52, p. 53.

See San Rita del Cobre Mine, In re, Copp's Min. Dec. 190.

If the local laws of miners or the statutes of a State require a certain amount of expenditures to be made annually in order to maintain a possessory title to a placer claim, then a failure to comply with such would render the ground subject to relocation.

Sears, In re, 8 C. L. O. 152, p. 153.

This section recognizes the rules and regulations adopted by miners in a mining district, and a location within such district must comply with the requirements of the rules and regulations adopted by the miners.

Smith v. Newell, 86 Fed. 56, p. 57.

Mining regulations, though disregarded and violated by miners, must remain in force and be recognized as valid until amended or repealed by the same authority that established them, and a mining location must conform to such district regulations before it will be recognized by the Land Department.

Chavanne, In re, Copp's Min. Lands, 283, p. 284.

E. LOCATION NOTICE OR CERTIFICATE.

1. NOTICE OF LOCATION NOT REQUIRED.
2. NOTICE OR CERTIFICATE PERMITTED—EFFECT.
3. OBJECT OF LOCATION NOTICE.
4. GENERAL REQUISITES AND CONSTRUCTION.
5. PARTICULAR REQUIREMENTS.
6. REQUIREMENTS AS TO LOCATION CERTIFICATE.
7. NOTICE MUST REFER TO NATURAL OBJECT.
8. SUFFICIENCY AND EFFECT OF NOTICE.
9. SUFFICIENCY OF NOTICE—INSTANCES.
10. INSUFFICIENCY OF NOTICE—INSTANCES.
11. LOCAL REGULATIONS OF MINERS AS TO NOTICE.
12. STATUTORY REGULATIONS AS TO NOTICE.
13. AMENDED LOCATION NOTICE OR CERTIFICATE.
14. ERRORS IN LOCATION NOTICE—EFFECT AND CORRECTION.
15. TEMPORARY DESTRUCTION OF NOTICE—EFFECT.
16. DECLATORY STATEMENT.
 - a. DEFINITION AND NATURE.
 - b. SUFFICIENCY IN FORM.
 - c. VERIFICATION—SUFFICIENCY.
 - d. RECORD—PURPOSE AND EFFECT AS NOTICE.

1. NOTICE OF LOCATION NOT REQUIRED.

The United States statute does not require any notice of location to be posted on the claim or recorded.

Book v. Justice Min. Co., 58 Fed. 106.

Perego v. Erwin, 85 Fed. 904, p. 906.

See Haws v. Victoria Copper Min. Co., 160 U. S. 303.

Deaney v. Mineral Creek Mill. Co., 11 N. Mex. 279, p. 291.

The mining laws of the United States do not require any notice to be posted upon the location of a mining claim when it is made, neither is there any provision requiring the notice to be posted in any particular place upon the claim, as locations of mining claims are valid without any notice of location placed upon the ground.

Book v. Justice Min. Co., 58 Fed. 106, p. 115.

Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, pp. 217, 218.

McCulloch v. Murphy, 125 Fed. 147, p. 151.

The statute does not require that the notice shall either be posted on the ground or recorded, but such a notice is one kind of a marking when posted on the ground, and if it contains a description of the ground located, and is placed upon the record, it becomes constructive notice to the world of the locator's ground described in the record.

Meydenbauer v. Stevens, 78 Fed. 787, p. 792.

The United States mining laws do not require the notice of location to be posted or recorded except where this is required by local customs and rules of miners.

Anderson v. Caughey, 3 Cal. App. 22, p. 26.

McCleary v. Broadus, 14 Cal. App. 60, p. 66.

See *Carter v. Bacigalupi*, 83 Cal. 187.

Dwinnell v. Dyer, 145 Cal. 12.

This section does not require a description of a mining claim to be included in the notice of location, nor demand more than that the claim shall be distinctly marked on the ground so that its boundaries can be readily traced.

Sanders v. Noble, 18 Mont. 110, p. 116.

This section does not require notice of a mining claim to be either posted or recorded, but intrusts that matter to local regulation subject to the condition that when notice is required to be recorded it shall contain among other things a description of the property.

Allan v. Dunlap, 24 Oreg. 229, p. 238.

See *Carter v. Bacigalupi*, 83 Cal. 187.

County of Kern v. Lee, 129 Cal. 361, p. 362.

This section does not require that a notice or declaratory statement shall be verified nor does it require that any notice or declaratory statement shall be filed for record.

Hickey v. Anaconda Copper Co., 33 Mont. 46, p. 62.

2. NOTICE OR CERTIFICATE PERMITTED—EFFECT.

The statute does not require a copy of the location notice to be posted on a claim, but miners of a local mining district may make such a regulation, and in that event it would be necessary to observe it.

Elbert, In re, 16 C. L. O. 123.

A location certificate differs from ordinary documentary muniments of title in that it is not a title or proof of title, nor does it constitute, nor of itself establish, the possessory right to which it relates, but when duly recorded it becomes notice to the world of the description of the premises claimed, by whom and when located, and is constructive notice of the claimants' possession, and it may be made by statute one of the requisite steps to constitute a perfected mining location.

Etling v. Potter, 17 L. D. 424, p. 426.

Strepy v. Stark, 7 Colo. 614.

Bismark Mtn. Gold Min. Co. v. North Sunbeam Gold Min. Co., 14 Idaho 516, p. 530.

The mere posting of a notice upon the ground is not sufficient to withdraw it from the public domain so as to render invalid another location as to conflicting areas where such location would otherwise be valid.

Helena Gold, etc., Co. v. Baggaley, 34 Mont. 464, p. 473.

See *Lavagnino v. Uhlig*, 198 U. S. 443.

Street v. Delta Min. Co., 42 Mont. 371, p. 381.

Posted notices may constitute a part of the marking and may aid in determining the situs of the monuments marking the claim, and they constitute a part of the marking, and while on account of the temporary nature may be of minor significance, yet this is not so where the location is followed by the actual and continued working of a claim.

Eaton v. Norris, 131 Cal. 561, p. 565.
See Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.

3. OBJECT OF LOCATION NOTICE.

The object of notice of the location of a mining claim is to impart information to the public.

Preston v. Hunter, 67 Fed. 996, p. 998.
See Columbia Copper Min. Co. v. Dutches Min., etc., Co., 13 Wyo. 244, p. 255.

The object of a notice of location is to guide a subsequent locator and afford him information as to the extent of the claim located, by such notice, and whatever does this fairly and reasonably should be held a good and sufficient notice, and if a miner has located a claim, taken possession, and worked it in good faith for a considerable length of time, his location notice is not to be defeated by technical criticism.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.
Talmadge v. St. John, 129 Cal. 430, p. 435.
Hauswirth v. Butcher, 4 Mont. 299, p. 309.

The provisions of this section are designed to secure a definite description in the location notice, so plain that the claim can be easily ascertained.

Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 298.
Overgaard v. Westerberg, 3 Alaska 168, p. 179.
Cascaden v. Bortolis, 3 Alaska 200.
San Miguel, etc., Min. Co. v. Bonner, 33 Colo. 207, p. 213.
Tiggeman v. Mrzlak, 40 Mont. 19, p. 30.
See Morrison v. Regan, 8 Idaho 291.
Upton v. Larkin, 7 Mont. 449.
Flavin v. Mattingly, 8 Mont. 242.
Gamer v. Glenn, 8 Mont. 371.
Riste v. Morton, 20 Mont. 139.
Bramlett v. Flick, 23 Mont. 95.
Farmington Gold Min. Co. v. Rhydney, 20 Utah 363.

The object of the location notice is to advise the public with reasonable certainty of the location and extent of the claim, and if the notice possesses within its terms information from which the location and boundaries may be found and identified by reference to some natural object or monument which is in fact permanent, it is sufficient, although it fails to designate the natural object or permanent monument as such in the precise language of the statute.

Seidler v. Lafave, 4 N. Mex. 369, p. 373.
Seidler v. Lafave, 5 N. Mex. 44.
Overruling Baxter Mountain Gold Min. Co. v. Patterson, 3 N. Mex. 179.
See Seidler v. Maxfield, 4 N. Mex. 374.

A location notice is a necessary paper in the patent proceedings, and there can not be a valid notice without a date, and accordingly the date appears in the proceedings, and it is generally placed on the posted notice, but if not it can be known by an examination in the Land Office.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 108 Fed. 189, p. 192.

A location notice generally describes the ground located, and not what it is proposed to locate.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 458.

4. GENERAL REQUISITES AND CONSTRUCTION.

Under statutes requiring notice of mining claims to be posted on the ground courts are inclined to be exceedingly liberal and not technical in the construction of such notices.

- Book v. Justice Min. Co., 58 Fed. 106, p. 115.
 Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 215.
 McCulloch v. Murphy, 125 Fed. 147, p. 151.
 Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 392.
 Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 411.
 Zerres v. Vanina, 134 Fed. 610, p. 616.
 Sanders v. Noble, 22 Mont. 110, p. 137.

Location notices of mining claims are usually prepared by the uneducated miners and are not held to technical accuracy, but they are construed with much liberality to aid miners in acquiring and holding valuable rights in mining property and to develop the mineral resources of the country.

- Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 166.
 See North Noonday Min. Co. v. Orient, etc., Min. Co., 1 Fed. 522.
 Wilson v. Triumph Min. Co., 19 Utah 66.
 Farmington Gold Min. Co. v. Rhymney Gold, etc., Co., 20 Utah 363.
 Wells v. Davis, 22 Utah 322.

A notice of the location of a mining claim which substantially complies with the statute is sufficient.

- McEvoy v. Hyman, 25 Fed. 596, p. 598.
 Steen v. Wild Goose Min. Co., 1 Alaska 255, p. 263.
 See Strepey v. Stark, 7 Colo. 614.
 Frisholm v. Fitzgerald, 25 Colo. 290.
 Morrison v. Regan, 8 Idaho 291.
 Bismark Mtn. Gold Min. Co. v. North Sunbeam Gold. Min. Co., 14 Idaho 516, p. 528.
 Butte Consol. Min. Co. v. Barker, 35 Mont. 327.

A notice of location must describe the mining claim located in such a manner that it can be identified.

- Smith v. Cascaden, 148 Fed. 792, p. 794.

The information which the law requires the locator of a mining claim to give to the public must be deemed sufficient to acquaint third persons with the existence of such claim.

- Pacific Slope Lode, In re, 12 L. D. 686, p. 687.
 See Noyes v. Mantle, 127 U. S. 348.

The notice or certificate of the location of a mining claim is not required to show the precise boundaries of the claim as marked on the ground, but it is sufficient if it contains directions that, taken in connection with the boundaries, will enable the claim to be found and the lines traced.

- Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 166.
 Carter v. Bacigalupi, 83 Cal. 187.

A mining location is sufficient if it conforms strictly with the provisions of this section with respect to the posting and registration of notices and their contents.

- Gregory v. Pershbaker, 73 Cal. 109, p. 116.

A location notice is sufficient under this section if by any reasonable construction, in view of the surrounding circumstances, the language used in the description will impart notice to subsequent locators.

- Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Min. Co., 14 Idaho 516, p. 523.
 See Morrison v. Regan, 8 Idaho 291.
 Snowy Peak Gold Min. Co. v. Tamarack & Chesapeake Min. Co., 17 Idaho 630, p. 635.
 Farmington Gold Min. Co. v. Rhymney Gold, etc., Co., 20 Utah 363.

Unnecessary words in the notice of the location of a mining claim may be rejected as surplusage.

Preston v. Hunter, 67 Fed. 996, p. 998.

A location notice must sufficiently and definitely describe the ground located, and land sought to be patented must be covered by the location on which the application for patent is based, and patent can not issue for any ground outside of the location.

Jackson v. Dyer, 8 C. L. O. 3.

5. PARTICULAR REQUIREMENTS.

A location notice which contains the name of the locator, date of the location, and describes the claim with sufficient accuracy is sufficient to form a basis for a miner's title.

Butler v. Good Enough Min. Co., 1 Alaska 246, p. 249.

A location stake must be erected after the discovery of a mining claim, and must have thereon a plain sign or notice containing the name of the lode, the name of the locator, and the date of the discovery.

Cheesman v. Shreeve, 40 Fed. 787, p. 788.

The notice must contain a designation of the lode, the names of the locators, the date of the location and the number of feet claimed on each side of the center of the discovery shaft. It must also give the general course of the lode and such a description of the claim by reference to some natural object or permanent monument as will identify it with reasonable certainty.

Erhardt v. Boaro, 113 U. S. 527, pp. 533, 534.

Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350, p. 360.

See *Wright v. Lyons*, 45 Oreg. 167, p. 173.

A location notice is not required to be placed on the vein located, but is sufficient if near by and indicates the vein sought to be located.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 461.

Phillipotts v. Bladell, 4 Mor. Min. 341; 8 Nev. 62.

The notice of the location of a mining claim must show among other things the date of the location specified in the notice.

Preston v. Hunter, 67 Fed. 996, p. 998.

From the time of the discovery of a lode or vein to the time of its excavation a general designation of the claim, by notice posted on a stake placed at the point of discovery, stating the date of the location, the extent of the ground claimed, the designation of the lode and the name of the locator is sufficient to entitle him to possession and to enable him to make the necessary excavations and to prepare the proper certificate for record.

Erhardt v. Boaro, 113 U. S. 527, p. 534.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 458.

Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350.

See *Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co.*, 125 Fed. 389, p. 394.

Donahue v. Meister, 88 Cal. 121.

Sanders v. Noble, 22 Mont. 110, p. 122.

Deeney v. Mineral Creek Min. Co., 11 N. Mex. 279.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 127.

6. REQUIREMENTS AS TO LOCATION CERTIFICATE.

The locator of a claim must make and file a location certificate, which shall contain the name of the locator, the date of the location, and such a description of the claim by reference to some natural object or permanent monument as will identify it, and

it must give the number of feet in length claimed on each side of the center of the discovery shaft and the general course of the lode.

Cheesman v. Shreeve, 40 Fed. 787, p. 789.

This section requires a certificate of location to contain the name of the locators, the date of the location, and the description of the claim with reference to some natural object or permanent monument, and the statute of Idaho (section 3102) provides that the certificate must contain such a description of the locality, by reference to natural landmarks or fixed objects and contiguous claims, if any, as to render the situation reasonably certain from the letter of the notice itself.

Morrison v. Regan, 8 Idaho 291, p. 305.

A location certificate which locates a lode by reference to two mountain peaks, giving the course or bearing of each from the discovery shaft in degrees and minutes, is prima facie sufficient under this section, taken in connection with the other parts of the description.

Craig v. Thompson, 10 Colo. 517, p. 525.

7. NOTICE MUST REFER TO NATURAL OBJECT.

A notice of a mining location must contain a description of the claim by reference to some natural object or permanent monument by which it can be identified.

Mutchmor v. McCarty, 149 Cal. 603, p. 607.

Reference may be made in a location notice to a located mining claim, as this is a natural object or landmark within the meaning of this section, but such reference must be reasonably certain.

Morrison v. Regan, 8 Idaho 291, p. 302.

A location notice of a mining claim is defective and insufficient where it has no proper reference to a natural object or a permanent monument as required by this section.

Vogel v. Waring, 146 Fed. 949, p. 951.

8. SUFFICIENCY AND EFFECT OF NOTICE.

A location notice attached to a stake planted on the location, though somewhat indefinite, is sufficient if, when taken in connection with the stake and the monuments mentioned, and together with the subsequent improvements, it is so plain that no one could be misled thereby.

Chambers v. Pitts, 3 C. L. O. 162.

A location notice is sufficient when it does not mislead or confuse a person honestly desiring to ascertain the location or size of the claim.

Cook v. Johnson, 3 Alaska 506, p. 527.

A notice of location is sufficient which particularly describes the claim and the boundaries thereof and gives the names of the locators and the date of the location, and where it is shown in connection with such notice that the boundaries of the claim were so marked that they could be readily determined.

Holdt v. Hazard, 10 Cal. App. 440, p. 442.

A location notice controls where there is no discrepancy between the calls of the location notice and the stakes on the ground, where it is shown that the adverse claimant had actual knowledge of the contents of the notice.

Cardner v. Stanley Consol. Min., etc., Co., 193 Fed. 517, p. 519.

See Flynn Group Min. Co. v. Murphy, 18 Idaho 266.

9. SUFFICIENCY OF NOTICE—INSTANCES.

The notice of the location of a mining claim, giving the length and breadth in feet, and describing it as beginning at the boundary of another patented claim, and as lying north of another patented claim, is sufficient.

Book v. Justice Min. Co., 58 Fed. 106, p. 115.

Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 215.

Cook v. Johnson, 3 Alaska 506, p. 527.

Green v. Gavin, 10 Cal. App. 330, p. 334.

Londonderry Min. Co. v. United Gold Mines Co., 38 Colo. 480, p. 487.

See Zerres v. Vanina, 134 Fed. 610.

Kern Oil Co. v. Crawford, 143 Cal. 298, p. 302.

Bismark Mtn., etc., Min. Co. v. North Sunbeam, etc., Min. Co., 14 Idaho 516, p. 525.

Flynn Group Min. Co. v. Murphy, 18 Idaho 266, p. 278.

West Granite Min. Co. v. Granite Mtn., etc., Co., 7 Mont. 356.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 464.

Wells v. Davis, 22 Utah 322.

A notice of location of a mining claim is sufficient in which only its extent along the lode was given, and the width of the claim in such case is to be determined by the boundaries marked upon the surface.

McCarthy v. Phelan, 132 Cal. 404, p. 406.

Gleeson v. Martin White Min. Co., 13 Nev. 442.

Fox v. Myers, 29 Nev. 169, p. 186.

See Phillpotts v. Blasdell, 8 Nev. 62, p. 75.

A written notice posted on a stake at the point of discovery of a lode or vein declaring an intention to claim 1,500 feet on such lode, vein, or deposit, is sufficient, as it informs all persons that the locators claim the full length along its course, which the law permits them to take.

Erhardt v. Boaro, 113 U. S. 527, p. 533.

Doe v. Waterloo Min. Co., 55 Fed. 11, p. 13.

Sanders v. Noble, 22 Mont. 110, p. 122.

See Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350.

Columbia Copper Min. Co. v. Dutchess Min., etc., Co., 13 Wyo. 244, p. 255.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, pp. 262, 270.

A notice to the effect that the locator has "taken up and located 1,500 lineal feet on this vein of gold and silver quartz, and 300 feet on each side from the center thereof," and describing the claim with reference to other patented claims, is sufficient.

Book v. Justice Min. Co., 58 Fed. 106, p. 114.

Credo Min., etc., Co. v. Highland Min., etc., Co., 95 Fed. 911, p. 913.

A notice is sufficient which states the locator has located and claims 1,500 feet on the lode running 1,000 feet northwesterly and 500 feet southeasterly, with 300 feet on each side, for mining purposes.

Doe v. Waterloo Min. Co., 55 Fed. 11, p. 13.

Waterloo Min. Co. v. Doe, 56 Fed. 685, p. 687.

Sanders v. Noble, 22 Mont. 110, p. 129.

See Gird v. California Oil Co., 60 Fed. 531, pp. 535, 538.

Smith v. Cascaden, 148 Fed. 792, p. 794.

Patterson v. Tarbell, 26 Oreg. 29.

Marshall v. Harney Peak Tin., etc., Min. Co., 1 S. Dak. 350.

A location notice and affidavit describing a mining claim as beginning at a stake and giving the various lines and distances, and returning "to place of beginning," is sufficient, as the stake is regarded as a monument and its permanency is a question of fact.

O'Donnell v. Glenn, 8 Mont. 248, p. 253.

Wright v. Lyons, 45 Oreg. 167, p. 173.

A location notice in the usual form, which gives the claim a particular name and continues: "Extending along said vein or lode 500 feet in a southerly direction and 1,000 feet in a northerly direction, from the center of the discovery shaft (at which shaft

this notice and statement is posted), and 300 feet on each side from the middle or center of said lode or vein at the surface, comprising in all 1,500 feet in length along said vein or lode, and 600 feet in width," is a sufficient compliance with this section of the statute.

Sanders v. Noble, 22 Mont. 110, pp. 113, 116.

A notice of location of a mining claim which describes the claim by metes and bounds and by a reference to stakes set in the ground, adding that the claim "lies about 1 mile" from a specified mountain in a southeasterly direction, is not defective because it fails to state any particular beginning point on the mountain.

Vogel v. Warsing, 146 Fed. 949, p. 951.

See *Flavin v. Mattingly*, 8 Mont. 242.

Brady v. Husby, 21 Nev. 453.

Where a notice is indefinite in stating the number of feet claimed on each side of the discovery point the locator's rights will be limited to an equal number of feet on each side of the course of the lode or vein.

Erhardt v. Boaro, 113 U. S. 527, p. 533.

Omar v. Soper, 11 Colo. 380, p. 385.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, pp. 262, 270.

A notice of location of a placer claim describing the ground by metes and bounds and referring to subdivisions of the Government survey for the boundaries of the claim, and which notice was put in a small tin can and the can placed on a shelf in a rock mound more than 2 feet high, erected near a tree on the claim, and where the corners of the claim were also marked by large rock mounds more than 2 feet in height, and near one corner a diagram was cut in the rock and measurements given by which the claim could be easily identified, is sufficient, and clearly shows that the boundaries of the claim were so marked upon the ground that they could be readily traced.

Gird v. California Oil Co., 60 Fed. 531, p. 543.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.

See *Hain v. Mattes*, 34 Colo. 345, p. 352.

A location notice showing a discovery, the amount of ground claimed, the length of the claim, giving the distance in opposite directions from the discovery, and showing that the claim was properly staked, and containing the name of the claim, the signature of the locator, and the date of location and of record, and the county and mining district in which the claim was located, is sufficient.

Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 165.

If the notice of a mining claim is indefinite in not stating the number of feet in width claimed on each side of the point of discovery or monuments of stone referred to, it must then be limited to an equal number of feet on each side, and this will constitute notice as to the number of feet claimed.

Farmington Gold Min. Co. v. Rhyhney Gold., etc., Co., 20 Utah 363, p. 368.

10. INSUFFICIENCY OF NOTICE—INSTANCES.

A location notice which neither in itself nor in the affidavit shows the date of location is insufficient.

O'Donnell v. Glenn, 8 Mont. 248, p. 254.

Wright v. Lyons, 45 Oreg. 167, p. 173.

A mere posting of a notice on a ledge of rocks cropping out of the ground that the poster has located thereon a mining claim without any discovery or knowledge on his part of the existence of mineral might be justly treated as a mere speculative proceeding and not the foundation of any right.

Erhardt v. Boaro, 113 U. S. 527, p. 536.

Lange v. Robinson, 148 Fed. 799, p. 802.

Redden v. Harlan, 2 Alaska 402, p. 406.

Bulette v. Dodge, 2 Alaska 427, p. 429.

The mere notice of the location of a mining claim without a discovery is not sufficient to hold it as against a subsequent occupant of the same ground under the town-site act.

Bonner v. Meikle, 82 Fed. 697, p. 703.

Where a locator has not made a discovery and not retained possession for the purpose of prosecuting work looking to a discovery, the mere posting of a notice and marking of the boundaries will not exclude others from making a peaceable entry.

New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211.

Whiting v. Straup, 17 Wyo. 1, p. 24.

11. LOCAL REGULATIONS OF MINERS AS TO NOTICE.

A notice of a mining claim must, in the matter of substance and the matter of execution and attestation, comply with the valid rules and regulations of a mining district.

Gird v. California Oil Co., 60 Fed. 531, p. 538.

The local rules or regulations requiring the locator of a mining claim to post a notice on the claim and to show it, together with the corners of the claim, to a witness who is himself a claim owner within the district, and who must sign the notice as such witness and require a copy to be given to the recorder for record, are not in conflict with any of the provisions of the United States statutes, but any such location is subject to the requirement that the location must be distinctly marked upon the ground so that its boundaries can be readily traced.

Gird v. California Oil Co., 60 Fed. 531, p. 534.

12. STATUTORY REGULATIONS AS TO NOTICE.

The provisions of section 3104 of the revised statutes of Idaho, so far as requiring the notice of location to contain the date of the location, the name of the locators, and the description of the claim located by reference to some natural object or permanent monument, as to render the situation of the claim reasonably certain, are substantially the same as this section.

Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Min. Co., 14 Idaho 516, p. 522.

This section does not require that the notice of a mining claim shall be posted on the claim, but leaves such matters to the regulation of local laws; but the local laws generally require that a notice shall be posted, and in the absence of such a requirement it would be a very proper aid to the description of a claim.

Maderia v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 731.

Carter v. Bacigalupi, 83 Cal. 188.

This section does not require that the notice of location of a mining claim shall be verified by oath, and some doubt is expressed by the Montana court as to whether or not a territorial legislature can impose this additional burden of verification on the locator of a mining claim.

Wenner v. McNulty, 7 Mont. 30, p. 36.

Upton v. Larkin, 7 Mont. 449, p. 454.

O'Donnell v. Glenn, 8 Mont. 248, p. 255.

See *Jupiter Min. Co. v. Bodie Consol. Min. Co.*, 11 Fed. 666.

Taylor v. Middleton, 67 Cal. 656.

Anderson v. Black, 70 Cal. 228, p. 230.

Hauswirth v. Butcher, 4 Mont. 299, p. 307.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 462.

13. AMENDED LOCATION NOTICE OR CERTIFICATE.

Where a second or amended notice or certificate of location contains names other than those set forth in the original, it may be treated as an original notice as to the persons whose names are not included in the first, and as a supplemental or amended notice as to those whose names appear in both, but third persons can take no advantage of such new or amended notice.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 396.
Thompson v. Spray, 72 Cal. 528, p. 529.

While a locator may have the right to amend his notice and location, yet he can not do so to the detriment of an intervening locator.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 108 Fed. 189, p. 194.

The law does not require an amended notice or certificate of location to state the object or purpose of making such amendment, but a general statement that it is made to cure errors or defects is sufficient, and the filing of such amended notice or certificate is effectual for all the purposes enumerated in the statute whether they are mentioned in the notice or certificate or not.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 397.
Johnson v. Young, 18 Colo. 625, p. 629.

An amended notice or certificate of location is valid to the full extent of the boundaries therein described as against any subsequent locator of any portion of the premises included, and the locator is not required to make a relocation of the new territory, or to claim a discovery of mineral therein, or to show the performance of the annual assessment work, or the actual possession thereof.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 399.
Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 400.
Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 406.
King Solomon Tunnel, etc., Co. v. Mary Verna Min. Co., 22 Colo. App. 528, p. 534.

An amended certificate of location, when made, becomes the completed location of the discoverer or locator, and has the same validity as if it had been made in the first instance, and third persons can acquire no rights subsequent to the presentation of such amended location certificate.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 396.
See Becker v. Pugh, 17 Colo. 243.

The law makes a distinction between a relocation and an amended location certificate, though both may be designated as amendments in such location certificates.

Cheesman v. Shreeve, 40 Fed. 787, p. 789.

A defective original certificate of location is admissible in evidence in connection with an amended certificate.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 254.
See Van Zandt v. Argentine Min. Co., 8 Fed. 725.
Strepey v. Stark, 7 Colo. 614.
Duncan v. Fulton, 15 Colo. App. 140.
Frisholm v. Fitzgerald, 25 Colo. 290, p. 294.

The purpose and office of an amended declaratory statement is to cure defects in the original, and thereby put the locator, in case of no intervening rights, in the same position he would have occupied had no such defects occurred.

Butte Consol. Min. Co. v. Barker, 35 Mont. 327, p. 337.
See Duncan v. Fulton, 15 Colo. App. 140.

The right of a locator to file an additional certificate can only avail him where there was an original location, valid though imperfect.

Sullivan v. Sharp, 33 Colo. 346, p. 348.
See Strepey v. Stark, 7 Colo. 614.
Johnson v. Young, 18 Colo. 625.

14. ERRORS IN LOCATION NOTICE—EFFECT AND CORRECTION.

Positive exactness is not required in notices posted on a mining claim when required by statute, and slight mistakes and inaccuracies as to the true course and direction of a vein or lode will not invalidate a notice, as it is the marking of the location by posts and monuments that determines the particular ground located.

- Book v. Justice Min. Co., 58 Fed. 106, p. 115.
 Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 215.
 McCulloch v. Murphy, 125 Fed. 147, p. 151.
 Steen v. Wild Goose Min. Co., 1 Alaska 255, p. 263.
 Streprey v. Stark, 7 Colo. 614.
 Frisholm v. Fitzgerald, 25 Colo. 290.
 Morrison v. Regan, 8 Idaho 291, p. 308.
 Bismark Mtn. Gold Min. Co. v. North Sunbeam Gold Min. Co., 14 Idaho 516, p. 528.
 Bramlett v. Flick, 23 Mont. 95, p. 105.
 Butte Consol. Min. Co. v. Barker, 35 Mont. 327.
 Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 255.
 See McEvoy v. Hyman, 25 Fed. 596.
 Heman v. Griffith, 1 Alaska 264, p. 265.
 Sanders v. Noble, 22 Mont. 110.

Any clerical errors as to the courses or distances occurring in the notice of a mining location are controlled by the monuments erected upon the ground or by references to other well-known objects or locations, and frivolous objections as to the difference of descriptions of a mining claim in the complaint and that in the notice of location will not be entertained.

- Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 214.
 Strickland v. Commercial Min. Co., 55 Oreg. 48, p. 52.

An error in the notice of the location of a mining claim stating it to be in a certain county, when in fact it was in a different county, will not vitiate a description and render a notice invalid which is otherwise sufficient.

- Metcalf v. Prescott, 10 Mont. 283.
 See Book v. Justice Min. Co., 58 Fed. 106, p. 116.
 Duryea v. Boucher, 67 Cal. 141.
 Wheeler v. Smith, 5 Wash. 704, p. 706.

15. TEMPORARY DESTRUCTION OF NOTICE—EFFECT.

A valid location is not lost by the temporary destruction of the notice posted or of the monuments established, where these occur without the fault of the owner, but it may be doubted whether a valid location may be maintained for a long series of years without actual possession unless the boundaries are kept so marked that they can be readily traced.

- Gird v. California Oil Co., 60 Fed. 531, p. 539.
 Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 127.
 See Donahue v. Meister, 88 Cal. 121.
 Deeney v. Mineral Creek Min. Co., 11 N. Mex. 279.

16. DECLARATORY STATEMENT.

a. DEFINITION AND NATURE.

A declaratory statement, in practical mining operations, is a term applied to the statutory certificate of location, and is a certificate or statement of the location, containing a description of the mining claim, verified by the oath of the locator, performing, when recorded, a permanent function, and is the beginning of the locator's paper title, is the first muniment of such title, and is constructive notice to all the world of its contents.

- Gird v. California Oil Co., 60 Fed. 531, p. 536.
 Peters v. Tonopah Min. Co., 120 Fed. 587, p. 589.

Magruder v. Oregon, etc., R. Co., 28 L. D. 174, p. 177.
Pollard v. Shively, 5 Colo. 309, p. 312.
Metcalf v. Prescott, 10 Mont. 283.
McCowan v. McLay, 16 Mont. 234.
Sanders v. Noble, 22 Mont. 110.

A declaratory statement or certificate of location is not evidence of the mineral character of the land, but is nothing more than a notice or statement of the location of a mining claim giving a correct description thereof, and the recording of which is intended to impart constructive notice of such claim, its locality and extent.

Magruder v. Oregon, etc., R. Co., 28 L. D. 174, p. 177.

b. SUFFICIENCY IN FORM.

This section directs what a declaratory statement or certificate of location must contain, when such declaratory statement or certificate is required by a State statute, and when so required the provisions of this section then become mandatory, and strict compliance is essential to the validity of the declaratory statement.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 464.
See Golden Fleece Gold, etc., Min. Co. v. Cable Consol., etc., Min. Co., 12 Nev. 312.
Poujade v. Ryan, 21 Nev. 449.

The United States mining statutes do not use the term "declaratory statement," but by usage among miners the term has reference to the recorded certificate required by local statutes or rules and regulations of miners, and when a record is required it must contain all the provisions enumerated in this section of the statute, and a clear distinction is made between a notice of location required to be posted on the claim and the certificate of location or declaratory statement to be entered of record.

Peters v. Tonopah Min. Co., 120 Fed. 587, p. 589.
Sanders v. Noble, 22 Mont. 110.

A declaratory statement must be made on oath, must describe the claim as required by the statute, and must describe the discovery or location, and it is not sufficient to say that the description of the vein as given in the notice "is true and correct."

O'Donnell v. Glenn, 9 Mont. 452.
Metcalf v. Prescott, 10 Mont. 283.
McCowan v. McLay, 16 Mont. 234.
Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, p. 62.

A declaratory statement or record of the certificate of location which recites the citizenship of the locator, the fact of discovery, and the fact that the location has been marked upon the ground so that its boundaries can be traced, is not evidence of any of such facts in any State where no such facts are required to be stated in the local statutory notices.

Magruder v. Oregon, etc., R. Co., 28 L. D. 174, p. 177.

A defective declaratory statement is admissible in evidence in connection with an amended declaratory statement for the purpose of showing the identity of the ground in the two statements.

Butte Consol. Min. Co. v. Barker, 35 Mont. 327, p. 337.
See Strepey v. Stark, 7 Colo. 614.

c. VERIFICATION—SUFFICIENCY.

It seems from an extremely technical holding in one case that a verification of the declaratory statement is not sufficient where it was not signed by the locator himself, but showed that the locator (by name) was first duly sworn, and the verification was signed by the notary administering the oath, and duly attested by his seal, as in such case the certificate of the notary did not amount to anything, and the paper was not intrinsically a declaratory statement on oath.

Metcalf v. Prescott, 10 Mont. 283.

A declaratory statement, itself sufficient in form, was held to be insufficient as to the matter of verification where it recited that the locators (naming them) "being duly and severally sworn, depose and say that they are of lawful age and citizens of the United States; that they have heard read the above notice of location of 1,500 feet of the Yellow Jacket Lode; that the description of such lode as therein given is true and correct; that they have in every respect complied with the requirements of the statute and the local customs and laws regulating mining operations, and that they are three of the within named locators."

McCowan v. McLay, 16 Mont. 234.

Power v. Sla, 24 Mont. 243.

Where a local statute requires a locator to make and file a declaratory statement on oath, such a statement must not only be made on oath, but filed for record on oath, and the statute intends in such cases that the oath shall be a part of the record.

Metcalf v. Prescott, 10 Mont. 283.

A local statute requiring a declaratory statement to be upon oath is not invalid as not being in conflict with the United States mining statutes.

Metcalf v. Prescott, 10 Mont. 283.

McCowan v. McLay, 16 Mont. 234.

d. RECORD—PURPOSE AND EFFECT AS NOTICE.

The purpose of the record of a location certificate or declaratory statement is to give notice to the world of the existence and situs of the claim, and as between the claimant and the Government it preserves a memorial of the lands appropriated after monuments in their nature perishable are swept away. It also supplements the surface marking, in giving notice to third persons.

Pollard v. Shively, 5 Colo. 309, p. 317.

See Sanders v. Noble, 22 Mont. 110.

The filing and recording of a declaratory statement or a location certificate after the expiration of the statutory period will make the claim prior and superior to any attempted and subsequent location.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234.

F. RECORD OF LOCATION.

1. ABSENCE OF REQUIREMENT.
2. PURPOSE AND EFFECT OF RECORD.
3. LOCAL LAWS AND REGULATIONS MAY REQUIRE RECORD.
4. GENERAL PROVISIONS WHERE RECORD IS REQUIRED.
5. SUFFICIENCY OF RECORD TO IDENTIFY CLAIM.
6. REFERENCE TO OBJECTS OR MONUMENTS.
7. RECORD NOT CONCLUSIVE.
8. PLACE OF RECORD.

1. ABSENCE OF REQUIREMENT.

No statute of the United States requires a record of notice of the location of a lode mining claim, but the statute only provides what such a record shall contain when such record is required, and no such record is necessary unless the laws of the State or the regulations of a mining district require it.

Peters v. Tonopah Min. Co., 120 Fed. 587, p. 589.

Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 318.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 523.

Meydenbauer v. Stevens, 78 Fed. 787, p. 792.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 678.
 Sturtevant v. Vogel, 167 Fed. 448, p. 450.
 Golden Fleece, etc., Min. Co. v. Cable Consol., etc., Min. Co., 12 Nev. 312, p. 323.
 Southern Cross, etc., Min. Co. v. Europa Min. Co., 15 Nev. 383.
 Ford v. Campbell, 29 Nev. 578, p. 587.
 Gird v. California Oil Co., 60 Fed. 531, p. 534.
 See Gleeson v. Martin White Min. Co., 13 Nev. 442.
 Poujade v. Ryan, 21 Nev. 449.
 Brady v. Husby, 21 Nev. 453.
 Nash v. McNamara, 30 Nev. 114, p. 143.

Where there are no local rules of a mining district requiring the recording of a location at the time a mining claim was located, and such claim was subsequently relocated so as to conform to the act of Congress, the title of the claim dates back to the first location.

Fuller v. Harris, 29 Fed. 814, p. 818.

This section makes no requirement concerning the record of a placer claim as it does respecting locations upon veins or lodes.

Freezer v. Sweeney, 8 Mont. 506, p. 514.

In the absence of a statute or rules and regulations of local miners requiring the recording of a notice, the recording of such a notice does not constitute in itself a location, or any part of a legal location of a mining claim.

Sturtevant v. Vogel, 167 Fed. 448, p. 452.
 See Daggett v. Yreka Min. Co., 149 Cal. 360.

In the absence of a State or district requirement the failure to record notice of a mining location does not affect the validity of the location.

Sturtevant v. Vogel, 167 Fed. 448, p. 452.
 See County of Kern v. Lee, 129 Cal. 361, p. 369.

Where a mining claim is not located in an organized mining district no record of the notice of location is required, and the location is sufficient if the boundaries are definitely marked on the ground so that they can be readily traced.

Payton v. Burns, 41 Oreg. 430, p. 436.
 See Allen v. Dunlap, 24 Oreg. 229.

While this section requires a mining location to be distinctly marked on the ground, yet it does not require that such markings shall be described in the record of the claim.

Jackson v. Dines, 13 Colo. 90, p. 94.

2. PURPOSE AND EFFECT OF RECORD.

The provision that the record of a location notice was required to contain such a description of the claim by reference to some natural object or permanent monument as will identify it was intended to prevent the floating of claims.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 465.
 Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 172.

The purpose of the record is to identify the claim, and a reference in the record of the location of a mining claim to any natural object or permanent monument is sufficient if it will identify the claim.

Meydenbauer v. Stevens, 78 Fed. 787, p. 792.

The requirements of the law as to what the record of a mining claim shall show are evidently designed to fix the locus of the claim in order to prevent floating; but the monuments defining the claim on the ground answer this purpose better than the record and if erected in the beginning there is little use for a record, and accordingly the United States statute does not require any record.

Golden Fleece Gold, etc., Min. Co., v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 330.

When location certificates are recorded they take the place of the location notices and render proof of posting notices unnecessary as against an adverse claimant.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 275-278.
Treasury Tunnel, etc., Co. v. Boss, 32 Colo. 27.

This section requires all records of mining claims to contain the names of the locators, date of location, and the description of the claim by reference to some natural object or permanent monument, and is supplemented by the Territorial law requiring a notice posted upon the claim containing the same matters, and the purpose of both is to require such notice and description of the claim as will enable any person going upon the ground to identify it by means of the references made to natural objects or permanent monuments, and the boundary lines of other adjoining claims are neither natural objects nor permanent monuments.

Baxter Mountain Gold Min. Co., v. Patterson, 3 N. Mex. 179, p. 180.

The location of a mineral claim by placing monuments upon the surface of the ground to mark its boundaries, and in making a written declaration under oath of the discoverer and causing this to be recorded in the proper record is notice to the world of the existence of valuable mineral in such claim.

Pacific Slope, Lode, In re, 12 L. D. 686, p. 687.

The record of a mining location under this section is the inception of the paper title, but does not of itself constitute title nor give the possessory right to the mining ground to which it relates; but the certificate is made one of the steps requisite to constitute a perfected mining location.

Zerres v. Vanina, 134 Fed. 610, p. 619.

See *Strepey v. Stark*, 7 Colo. 614, p. 618.

Ford v. Campbell, 29 Nev. 578, p. 590.

An original locator of a mining claim is, after the location certificates are filed and recorded, estopped to deny the validity of the original location.

Speed v. McCarthy, 181 U. S. 269, p. 275.

The failure to file and record a notice of a mining location within the statutory period will not invalidate the claim, where the notice was recorded before any adverse rights were acquired.

Buffalo Zinc, etc., Co. v. Crump, 70 Ark. 525, p. 537.

3. LOCAL LAWS AND REGULATIONS MAY REQUIRE RECORD.

The mining law permits miners to provide for the recording of claims and a record, in order to permit a locator to hold his claim for a reasonable time until the vein could be developed, must fix the locus of the claim by reference to natural objects or permanent monuments.

Golden Fleece Gold & Silver Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 324.

This section confers the authority upon the miners of the respective mining districts to make regulations governing the location and recording of all papers necessary to hold possession of mining claims, and they are required to be recorded.

Monk, In re, 16 Utah 100, p. 103.

The Federal statute makes no provision for a recorder in mining districts, but the authority to provide for recorders and the recording of all papers to be recorded in locating and holding mining claims is left to the States in which such locations are made; and if the State does not exercise this power then the miners of a mining district may.

Monk, In re, 16 Utah 100, p. 104.

The United States statutes do not require the recording of notices of mining locations, and the provisions of the United States statutes as to the contents of a recorded notice or certificate apply only when a record is required by a local law.

Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 170.

4. GENERAL PROVISIONS WHERE RECORD IS REQUIRED.

This section prescribes what the record of a mining claim must set forth, and it must be followed with reasonable certainty.

Fuller v. Harris, 29 Fed. 814, p. 817.

By this section the record of a mining claim shall contain the name of the locator, the date of the location, and such a description of the claim, by reference to some natural object or permanent monument, as will identify it.

Hammer v. Garfield Min. Co., 130 U. S. 291, p. 298.

Bennett v. Harkrader, 158 U. S. 441, p. 443.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 534.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 679.

Book v. Justice Min. Co., 58 Fed. 106, p. 112.

Gird v. California Oil Co., 60 Fed. 531, p. 584.

Meydenbauer v. Stevens, 78 Fed. 787, p. 792.

Smith v. Newell, 86 Fed. 56, p. 58.

Credo Min. & Melting Co. v. Highland Min., etc., Co., 95 Fed. 911, p. 913.

Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 217.

Smith v. Cascaden, 148 Fed. 792, p. 793.

Cook v. Klonos, 164 Fed. 529, p. 535.

Sturtevant v. Vogel, 167 Fed. 448, p. 450.

Talmadge v. St. John, 129 Cal. 490, p. 435.

Conway v. Hart, 129 Cal. 480, p. 483.

Londonderry Min. Co. v. United Gold Mines Co., 38 Colo. 480, p. 482.

United States v. Ringeling, 8 Mont. 353, p. 359.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 466.

See Haws v. Victoria Copper Min. Co., 160 U. S. 303.

Reins v. Murray, 22 L. D. 409, p. 410.

Wright v. Lyons, 45 Oreg. 167, p. 169.

This section requires all records of mining claims hereafter made to contain the name of the locator, the date of the location, and a description of the claim, and Congress evidently anticipated that the miner of the mining districts would make regulations governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, and this section clearly implies that the provisions named will be required either by the local rules and regulations of the miners or by the legislature of the State.

Zerres v. Vanina, 134 Fed. 610, p. 617.

See Slothower v. Hunter, 15 Wyo. 189, p. 201.

The law requires that a record of a mining claim shall contain such a description as will identify the claim.

Armstrong v. Lower, 6 Colo. 393, p. 396.

Where a record of a mining claim is required it is not necessary that such record should be a literal and exact copy of the notice posted on the claim, as such record when required is intended to contain a more exact and specific description of the claim than the notice posted.

Gird v. California Oil Co., 60 Fed. 531, p. 536.

Sanders v. Noble, 22 Mont. 110, p. 136.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 465.

5. SUFFICIENCY OF RECORD TO IDENTIFY CLAIM.

The record of the notice of location of a mining claim is sufficient if it is a substantial compliance with the provisions of this section.

Preston v. Hunter, 67 Fed. 996, p. 998.

The first record of a mining claim is usually, if not always, imperfect, and it is not the policy of the law to avoid a location for defects in the record but rather to give the

locator an opportunity to correct his record whenever defects may be found therein, and if at any time a certificate is found to be defective or erroneous, it may be amended.

McEvoy v. Hyman, 25 Fed. 596, p. 600.

See Hyman v. Wheeler, 29 Fed. 347, p. 352.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 339, p. 394.

The name of the location of a mining claim may be changed at any time before a record is made.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 458.

The record of a location of a mining claim is not rendered invalid as to third persons where a name of one locator was erased and another name inserted.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 467.

The record of a mining claim describing one line as joining with the end line of another named located claim is a reference to a permanent monument sufficient to identify the claim.

Smith v. Newell, 86 Fed. 56, p. 59.

See Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 298.

Where the recorded distances and courses of the location notice do not correspond with the markings made on the ground the latter will prevail and will determine the locus in quo of the location regardless of the description as recorded.

Meydenbauer v. Stevens, 78 Fed. 787, p. 793.

6. REFERENCE TO OBJECTS OR MONUMENTS.

The statute requires the record of a mining claim to show a description of the claim located by reference to some natural object or permanent monument as will identify the claim, and where a notice refers to a "depot" as a permanent monument, it may show, for the purpose of identification, the distance from a "depot" and that such "depot" was the only one in the mining district where the claim was located, and that the distance of the natural object referred to from such "depot" corresponded to the difference in the notice.

Farmington Gold Min. Co. v. Rhydney Gold, etc., Co., 20 Utah 363, p. 368.

See Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 177.

The Legislature of Montana, in its desire to guard against false testimony in respect to a location of a mining claim, deemed it important that full particulars in respect to the discovery shaft and the corner post should be placed of record.

Sturtevant v. Vogel, 167 Fed. 448, p. 451.

See Baker v. Butte City Water Co., 28 Mont. 222.

Butte City Water Co. v. Baker, 196 U. S. 119.

The statute does not require the recording of a mining claim to show that it is distinctly marked on the ground so that its boundaries can be readily traced.

McCann v. McMillan, 129 Cal. 350, p. 355.

7. RECORD NOT CONCLUSIVE.

The fact that this section provides that all records of mining claims shall contain, among other things, the date of the location is not conclusive, as this would deprive an innocent party of any relief from fraud, ignorance, or mistake, and an error in the notice of location must give way to the proved facts.

Webb v. Carlon, 148 Cal. 555, p. 557.

Requiring recording of mining claims does not exclude parol proof of actual possession and the extent of that possession as prima facie evidence of title.

Campbell v. Rankin, 99 U. S. 261, p. 264.

Webb v. Carlon, 148 Cal. 555, p. 558.

8. PLACE OF RECORD.

While the mining statutes do not in terms require that a record of a mining claim be made in the county record it does provide that a locator must comply with the laws of the United States and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, and where the local laws require a record the record is a necessary part of the location of a mining claim.

Rose No. 1, etc., Lode Claim. In re, 22 L. D. 83, p. 85.

In the absence of an organized mining district the records of mining claims are usually made in the office of the recorder of the county in which the claim is situated.

Rose No. 1, etc., Lode Claim, In re, 22 L. D. 83, p. 85.

The fact that many miners did record the notice of their mining claim at a certain place is evidence tending to show that they thought such record available and relied upon it, and tending to show a custom.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 678.

It is only necessary to record the location of a mining claim at the place where the custom in force at the time of the location required the record to be made.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 677.

The recording of notice as required by this section is dispensed with where there is no recorder in the mining district.

Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 318.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 533.

The record of a mining claim in a pocket memorandum book and without specifying a natural object or permanent monument, or any designation or mark by which a placer claim can be identified, is insufficient.

Fuller v. Harris, 29 Fed. 814, p. 816.

G. MARKING LOCATION ON THE GROUND.

1. BOUNDARIES MUST BE TRACEABLE.
2. PROVISIONS FOR MARKING BOUNDARIES ARE MANDATORY.
3. PURPOSE OF REQUIREMENT.
4. CONSTRUCTION OF REQUIREMENT.
5. LOCATION AND NOT BOUNDARIES REQUIRED TO BE MARKED.
6. TIME FOR MARKING LOCATION.
7. METHODS OF MARKING.
8. SUFFICIENCY OF MARKINGS GENERALLY.
9. SUFFICIENT MARKING—INSTANCES.
10. INSUFFICIENT MARKING—INSTANCES.
11. FAILURE TO COMPLY WITH REQUIREMENT—EFFECT.
12. CHANGE OF BOUNDARIES—INTERVENING RIGHTS.
13. DESTRUCTION OF MARKS OR BOUNDARIES.

1. BOUNDARIES MUST BE TRACEABLE.

The statute is designed to secure a definite description, so that the claim can be readily traced and ascertained, by reference to some natural object or permanent monument, and in the absence of permanent monuments or natural objects stakes driven into the ground are certain and sufficient means of identification.

Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 168.

See Hammer v. Garfield Min., etc., Co., 130 U. S. 291.

Eaton v. Norris, 131 Cal. 561.

The location of a mining claim must be distinctly marked on the ground, so that its boundaries can be readily traced.

- Iron Silver Min. Co. v. Elgin Min., etc., Co., 118 U. S. 196, p. 206.
 Bennett v. Harkrader, 158 U. S. 441, p. 443.
 Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 318.
 Butte City Water Co. v. Baker, 196 U. S. 119, p. 122.
 North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 532.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 677.
 Book v. Justice Min. Co., 58 Fed. 106, p. 113.
 Meydenbauer v. Stevens, 78 Fed. 787, p. 793.
 Last Chance Min. Co. v. Bunker Hill, etc., Min. Co., 131 Fed. 579, p. 590.
 Smith v. Cascaden, 148 Fed. 792, p. 794.
 Charlton v. Kelley, 156 Fed. 433, p. 435.
 Correction Lode, In re, 15 L. D. 67, p. 68.
 Campbell, In re, 4 C. L. O. 102, p. 103.
 Steen v. Wild Goose Min. Co., 1 Alaska 255, p. 263.
 Looser v. Gardiner, 1 Alaska 641, p. 643.
 Phillips v. Smith, 11 Ariz. 309, p. 313.
 Gregory v. Pershbaker, 73 Cal. 109, p. 116.
 Temescal Oil Min., etc., Co. v. Salcido, 137 Cal. 211, p. 212.
 McCleary v. Broadus, 14 Cal. App. 60, p. 64.
 Gilpin County Min. Co. v. Drake, 8 Colo. 586, p. 589.
 See Sanders v. Noble, 22 Mont. 110, p. 125.
 Patchen v. Keeley, 19 Nev. 404, p. 413.

The only requirement imposed by Congress in the locating of mining claims by means of which the exclusive possession of mineral veins and the surface of mineral lands may be vested in the locator is the marking of the boundaries of the claim on the surface.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel, Min., etc., Co., 196 U. S. 337, p. 346.

This section contemplates the location of a mine as the first step toward obtaining title to the same and required the location to be distinctly marked on the ground, so that its boundaries can be readily traced.

X Sulphur Mine & Sulphur King Mine, In re, 5 C. L. O. 100.

This section, following the act of May 10, 1872 (17 Stat. 91), requires a mining location to be distinctly marked on the ground so that its boundaries can be readily traced.

Pollard v. Shively, 5 Colo. 309, p. 314.

This section requires a mining location to be distinctly marked on the ground so that its boundaries can be readily traced and requires the records of mining claims to contain the date of location and the description of the claim by reference to some natural object or permanent monument.

Harper v. Hill, 159 Cal. 250, p. 253.

Sweet v. Webber, 7 Colo. 443, p. 445.

The actual marking of a mining claim so that its boundaries can be readily traced is required in Alaska.

Overgaard v. Westerberg, 3 Alaska 168, p. 179.

The law does not require a marking of the vein or lode, but it is the surface land which is to be marked and described, and a notice of location must be interpreted with reference to this requirement.

Book v. Justice Min. Co., 58 Fed. 106, p. 116.

While the vein located is the principal thing and the surface only an incident thereto yet the mining law has provided no means of locating a vein except by defining a surface claim.

Maderia v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 728.

2. PROVISIONS FOR MARKING LOCATION ARE MANDATORY.

The provisions of this section requiring the location to be distinctly marked on the ground so that its boundaries can be readily traced, and the location notice to contain a description of the claim with reference to some natural object by which it can be identified, are mandatory and must be complied with.

Worthen v. Sidway, 72 Ark. 215.

Ware v. White, 81 Ark. 220, 223.

The provision as to the marking of a location on the ground so that the boundaries can be readily traced is an imperative and indispensable condition precedent to the valid location of a mining claim.

Overgaard v. Westerberg, 3 Alaska 168, p. 171.

The provisions of this section as to the marking of the boundaries and recording the notice of a mining claim must be strictly complied with to entitle an applicant to a patent.

Dephanger, In re, 1 L. D. 581.

The provisions of the statute requiring the marking of the claim so that its boundaries may be located are most important and beneficent and are not to be frittered away by construction.

Book v. Justice Min. Co., 58 Fed. 106, p. 114.

The marking of the boundaries is a necessary part of the location of a mining claim.

Pharis v. Muldoon, 75 Cal. 284, p. 287.

To make the location of a mining claim valid where the boundaries are not marked as required would be to disregard this section of the statute.

Croesus Min., etc., Co. v. Colorado Land & Min. Co., 19 Fed. 78, p. 80.

See Taylor v. Parenteau, 23 Colo. 368, p. 372.

A mining location will be defective if its boundaries are not staked out on the surface as required by this section.

Lebanon Min. Co. v. Consolidated Republican Min. Co., 6 Colo. 371, p. 379.

See Holland v. Mt. Auburn Gold Quartz Min. Co., 53 Cal. 149.

Geleich v. Moriarity, 53 Cal. 217.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 469.

The fact or circumstance that the ground on which a mining claim is located is extremely rough and mountainous does not relieve the locator of the obligation of so marking the claim that its boundaries can be readily traced.

Gird v. California Oil Co., 60 Fed. 531, p. 538.

Every mining location, whether lode or placer, on surveyed or unsurveyed land, should be distinctly marked on the ground so that its boundaries can be readily traced, and it is necessary to properly stake a placer location, although it is upon and conforms to legal subdivisions.

Elbert, In re, 16 C. L. O. 123.

NOTE.—The courts are not agreed as to the marking of the boundaries of placer claims on surveyed lands, and the Department holds it is not required.

Reins v. Murray, 22 L. D. 409.

See White v. Lee, 78 Cal. 593.

Kern Oil Co. v. Crawford, 143 Cal. 298.

Worthen v. Sidway, 72 Ark. 215.

Malececk v. Tinsley, 73 Ark. 610.

Saxton v. Perry, 47 Colo. 263.

McDonald v. Montana Wood Co., 14 Mont. 88.

The marking of the boundaries of a mining claim upon the ground is the main act of original location, and the ultimate fact in determining the validity of the location is the placing of such marks on the ground so as to identify the claim.

McCleary v. Broadus, 14 Cal. App. 60, p. 64.
See Donahue v. Meister, 88 Cal. 121.
Eaton v. Norris, 131 Cal. 561, p. 563.

The provisions of this section requiring a location to be distinctly marked on the ground so that its boundaries can be readily traced, and the record of the claim to be made, apply to placer as well as lode claims.

Sweet v. Webber, 7 Colo. 443, p. 449.

3. PURPOSE OF REQUIREMENT.

The object of the law in requiring the location to be marked on the ground is to fix the claim and to prevent floating or swinging, so that other persons who in good faith are looking for unoccupied ground may ascertain exactly what has been appropriated and make their locations with reference thereto.

Book v. Justice Min. Co., 58 Fed. 106, p. 114.
Walah v. Erwin, 115 Fed. 531, p. 536.
Maderia v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 728.
Sanders v. Noble, 22 Mont. 110, p. 135.
See Treasury Tunnel Min. Co. v. Boss, 32 Colo. 27.
Hauswirth v. Butcher, 4 Mont. 299.
Golden Fleece Mine Co. v. Cable Consol. Min., etc., Co., 12 Nev. 312.
Gleeson v. Martin White Min. Co., 13 Nev. 442.
Beagquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 278.

The purposes of requiring the marking of the boundaries of the surface of the claim is to determine the right of the claimant as between himself and the Government, and to notify third persons of his rights.

Gird v. California Oil Co., 60 Fed. 531, p. 536.
Pollard v. Shively, 5 Colo. 309.

The intention of this section is that the boundaries shall be so designated by marks that they can be ascertained by an inspection of the ground without the aid of a surveyor, and can be readily traced by such marks, and this applies to placer claims located upon surveyed lands.

Worthen v. Sidway, 72 Ark. 215, p. 224.
See White v. Lee, 78 Cal. 593.
Anthony v. Jillson, 83 Cal. 296.

The requirement that the location must be distinctly marked on the ground has especial reference to lode claims and its sole purpose is to define on the surface of the ground the territory claimed.

Reins v. Murray, 22 L. D. 409, p. 410.

A location is required to be so certain that miners may know the extent of the claim and be able to locate unoccupied ground without being embraced in the prior location.

Mt. Diablo Min., etc., Co. v. Callison, 5 Sawy. 439, p. 449, 17 Fed. Cas. 918.
Hauswirth v. Butcher, 4 Mont. 299, p. 309.

One who has actual notice of a mining location can not complain because of the absence of marks on the ground.

Overgaard v. Westerberg, 3 Alaska 163, p. 187.
See Haws v. Victoria Copper Min. Co., 160 U. S. 303.
McKinley Min. Co. v. Alaska, etc., Min. Co., 183 U. S. 563.

4. CONSTRUCTION OF REQUIREMENT.

Courts are inclined to be liberal as to the manner in which mining locations may be marked upon the ground and be sufficient to comply with the statute.

- Book v. Justice Min. Co., 58 Fed. 106, p. 114.
 Gleeson v. Martin White Min. Co., 13 Nev. 442.
 Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 215.
 Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 392.
 Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 411.

The statute does not state how the markings shall be made, the kind, or in what particular place or places on the claim they shall be made.

Meydenbauer v. Stevens, 78 Fed. 787, p. 791.

The law does not define or describe the kind of marks that shall be made on the surface or upon what part of the ground or claim they shall be placed, hence any marking on the ground claimed, by stakes and mounds and written notices, whereby the boundaries of the claim located can be readily traced is sufficient.

- North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 532.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 677.
 Book v. Justice Min. Co., 58 Fed. 106, p. 113.
 Charlton v. Kelley, 156 Fed. 433, p. 435.
 Worthen v. Sidway, 72 Ark. 215, p. 223.
 Green v. Gavin, 10 Cal. App. 330, p. 334.
 Bismark Mtn. Gold Min. Co. v. North Sunbeam, etc., Min. Co., 14 Idaho 516, p. 525.
 See Kern Oil Co. v. Crawford, 143 Cal. 298, p. 302.
 Saxton v. Perry, 47 Colo. 263, p. 273.
 West Granite Mtn. Min. Co. v. Granite Min., etc., Co., 7 Mont. 356.
 Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 464.

A mining claim invalid because of the lack of sufficient marking of its boundaries in the original location may become valid from the time that the markings are properly made.

- Croesus Min., etc., Co. v. Colorado Land & Min. Co., 19 Fed. 78, p. 80.
 See Taylor v. Parenteau, 23 Colo. 368, p. 372.

Under this section a location may be open to relocation, although the locator has distinctly marked the location; it does not follow that a valid claim exists from the mere marking on the surface.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 77.

Whether or not the location of a mining claim has been distinctly marked on the ground so that its boundaries can be readily traced is a question of fact to be determined by the court or jury upon the evidence presented upon that issue.

- Erhardt v. Boaro, 113 U. S. 527.
 Hammer v. Garfield Min. Co., 130 U. S. 291.
 Bennett v. Harkrader, 154 U. S. 441.
 Book v. Justice Min. Co., 58 Fed. 106.
 Howeth v. Sullenger, 113 Cal. 547.
 Eaton v. Norris, 131 Cal. 561, p. 564.
 McCarthy v. Phelan, 132 Cal. 404, p. 406.
 Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312.
 Gleeson v. Martin White Min. Co., 13 Nev. 442.
 See Eilers v. Boatman, 111 U. S. 356.
 Bismark Mtn., etc., Min. Co. v. North Sunbeam, etc., Min. Co., 14 Idaho 516, p. 524.
 Snowy Peak Min. Co. v. Tamarack & Chesapeake Min. Co., 17 Idaho 630, p. 641.
 Dillon v. Bayliss, 11 Mont. 171.

Whether or not a mining claim is so marked on the ground as required by this section is a question of proof, and the manner of marking is not required to be stated in the notice.

- Farmington Gold Min. Co. v. Rhymney Gold, etc., Co., 20 Utah 363, p. 367.
 Wells v. Davis, 22 Utah 322, p. 327.

5. LOCATION AND NOT BOUNDARIES REQUIRED TO BE MARKED.

The law does not, in express terms, require the boundaries of a mining claim to be marked, but it requires the location to be so marked that its boundaries can be readily traced.

Book v. Justice Min. Co., 58 Fed. 106, p. 114.

Walsh v. Erwin, 115 Fed. 531, p. 536.

This section only requires a mining location to be so marked upon the ground that its boundaries can be easily traced, but it does not require that the lines themselves be indicated by physical marks or monuments so that a person unfamiliar with surveying, and without the aid of measuring instruments or a compass, can readily see by the marks themselves just what is claimed.

Oregon King Min. Co. v. Brown, 119 Fed. 48, p. 54.

Reversing Brown v. Oregon King Min. Co., 110 Fed. 728.

This section only requires that a mining claim should be so marked on the ground that its boundaries can be readily traced, but it does not mean that the marks shall be upon the actual ground included within the mining claim, but they may be upon any ground adjoining or near enough to readily designate the boundaries, and a slight mistake in the setting of stakes can not invalidate a mining location.

West Granite Mountain Min. Co. v. Granite Mountain Min. Co., 7 Mont. 356, p. 358.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 129.

See *Hauswirth v. Butcher*, 4 Mont. 299, p. 307.

This section does not require the boundaries of a mining claim to be marked, but only requires the location to be marked so that its boundaries can be readily traced, and accordingly where a notice of location gives the length and breadth of a claim from the discovery monument and the three corners and the centers of both end lines are properly marked, there should be no difficulty in tracing the entire boundary.

Warnock v. DeWitt, 11 Utah 324, p. 330.

The ultimate fact in determining the validity of a location is the placing of such marks on the ground as to identify the claim, or marks of such a character that the boundaries can be readily traced.

Eaton v. Norris, 131 Cal. 561, p. 563.

See *Taylor v. Middleton*, 67 Cal. 656.

Anderson v. Black, 70 Cal. 230.

While it is the policy of the courts to protect the miners in the enjoyment of their mining locations on public lands, yet there must be some practical improvement made of notifying others of the extent of the claim, and in the absence of local rules the boundaries of the claim must be indicated by physical marks or monuments sufficient to indicate its extent.

Roberts v. Wilson, 1 Utah 292, p. 296.

See *English v. Johnson*, 17 Cal. 106.

Eilers v. Boatman, 3 Utah 159, p. 166.

6. TIME FOR MARKING LOCATION.

This section does not necessarily mean that the location must be distinctly marked on the ground immediately upon the discovery, and this view is supported by the fact that the United States mining laws permit the States by statute to fix a reasonable time for marking the boundaries after discovery, and in the absence of such a statute the locator is entitled to a reasonable time in which to mark the boundaries of his claim after he has made a discovery.

Union Min., etc., Co. v. Leitch, 24 Wash. 585, p. 588.

Doe v. Waterloo Min. Co., 70 Fed. 455.

See *Erhardt v. Boaro*, 113 U. S. 527.
Murley v. Ennis, 2 Colo. 300.
Patterson v. Hitchcock, 3 Colo. 533.
Burke v. McDonald, 2 Idaho 646.
Gleeson v. Martin White Min. Co., 13 Nev. 442.
Marshall v. Harney Peak Tin Min. Co., 1 S. Dak. 350.
Newbill v. Thurston, 65 Cal. 419.
Patterson v. Tarbell, 28 Oreg. 29.

No time is fixed within which the location must be distinctly marked on the ground so that its boundaries can be readily traced; but until it is so marked the location is not complete and the law not complied with.

Maderia v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 728.
See Golden Fleece Min. Co. v. Cable Consol. Min. Co., 12 Nev. 312.

It is not necessary for a claimant to finally mark the location on the ground until after the record is made.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 535.

The location must be distinctly marked on the ground so that its boundaries can be readily traced, and within one month thereafter, or within three months of the discovery a certificate of the location must be filed for record in the county in which the lode is situated.

Erhardt v. Boaro, 113 U. S. 527, p. 533.
Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 590.
Sanders v. Noble, 22 Mont. 110, p. 122.
Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350, p. 360.

The markings of the boundaries may precede the discovery, or the discovery may precede the marking, and if both are completed before the rights of third persons intervene then the earlier act will ensure to the benefit of the locator as of the date of the later, and a complete possessory title to the premises will vest in him as of the later date.

Erwin v. Perego, 93 Fed. 608, p. 611.
Erhardt v. Boaro, 113 U. S. 527, p. 536.
Creeds & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 352.
North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 531.
Zollers v. Evans, 5 Fed. 172, p. 175.
Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 676.
Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.
Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 579.
Coanos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 14.
Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 217.
Thompson v. Spray, 72 Cal. 528, p. 533.
Strepey v. Stark, 7 Colo. 614.
Treasury Tunnel Min., etc., Co. v. Boss, 32 Colo. 27, p. 29.
Cedar Canyon Min. Co. v. Yarwood, 27 Wash. 271.

This section does not provide how soon after the discovery of a vein the location must be distinctly marked on the ground so that its boundaries can be readily traced, but until it is so marked the location is not complete and the law has not been complied with.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 461.
Loesser v. Gardiner, 1 Alaska 641, p. 643.

Where the boundaries of a claim are marked and notice of the location made before discovery, and a discovery is made before the rights of others intervene, a second marking of the boundaries and filing of another notice is unnecessary.

Mitchell, In re, 2 L. D. 752, p. 753.

Where there has been a discovery of mineral and the location notice filed, the claim is valid if the boundaries are marked before rights of third persons intervene; but the locator delays at his peril, as he assumes the risks of intervening rights.

Brockbank v. Albion Min. Co., 29 Utah 367, p. 370.
See Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.
Erwin v. Perego, 93 Fed. 608.
North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.

7. METHODS OF MARKING.

Under this section markings may consist of blazing trees along the boundaries or at the corners of a claim, or cutting away undergrowth, or making a trail through the timber along the sides or ends of a claim, or putting up stakes or posts, or piles of stone at the point of discovery, or blazing stumps, or posting a notice on the ground.

- Meidenbauer v. Stevens, 78 Fed. 787, p. 791.
 Ledoux v. Forester, 94 Fed. 600, p. 602.
 Walsh v. Erwin, 115 Fed. 531, p. 532.
 Oregon King Min. Co. v. Brown, 119 Fed. 48, pp. 51, 52.

Stakes or monuments placed at the corners of a mining claim do not mark its boundaries, but they are only a means by which the boundaries may be traced and are sufficient for such purpose.

- Book v. Justice Min. Co., 58 Fed. 106, p. 114.
 Hammer v. Garfield Min. etc., Co., 130 U. S. 291, p. 299.
 Walsh v. Erwin, 115 Fed. 531, p. 536.
 Hoffman v. Beecher, 12 Mont. 489, p. 502.
 Butler v. Good Enough Min. Co., 1 Alaska 246, p. 251.

In marking a claim upon the ground so that its boundaries can be traced regard must be had to the nature of the ground and the markings must be so placed that a person accustomed to tracing the lines of mining claims can readily find all the stakes or monuments.

- Ledoux v. Forester, 94 Fed. 600, p. 602.

The boundaries of a mining claim may be distinctly marked by blazed trees, stakes, and stumps of small trees, the tops of which were cut off four to five feet above the ground and the stumps squared.

- Allan v. Dunlap, 24 Oreg. 229, p. 236.

The sufficiency of the stakes and monuments to enable the location to be traced depends more or less upon the conformation and condition of the ground located, and a location on a hill covered by dense forests might require more definite marking than one on a barren mountain where the stakes could be readily seen.

- Book v. Justice Min. Co., 58 Fed. 106, p. 113.
 See Tiggerman v. Mrzlak, 40 Mont. 19, p. 23.

8. SUFFICIENCY OF MARKINGS GENERALLY.

Any marking on the ground of a mining claim by stakes, monuments, mounds, and written notices whereby the boundaries of the location can be readily traced is sufficient.

- Book v. Justice Min. Co., 58 Fed. 106, p. 113.
 North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.
 Smith v. Newell, 86 Fed. 56, p. 57.
 Walsh v. Erwin, 115 Fed. 531, p. 532.
 Oregon King Min. Co. v. Brown, 119 Fed. 48, p. 55.
 Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 217.
 Worthen v. Sidway, 72 Ark. 215, p. 223.
 Du Prat v. James, 65 Cal. 555.
 Taylor v. Middleton, 67 Cal. 656.
 Pollard v. Shively, 5 Colo. 309.
 Hauswirth v. Butcher, 4 Mont. 299, p. 308.
 Upton v. Larkin, 7 Mont. 449.
 Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 462.
 Southern Cross etc., Min. Co. v. Europa Min. Co., 15 Nev. 383.
 See Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 318.
 McKinley Creek Min. Co. v. Alaska United Min. Co., 183 U. S. 563.
 North Noonday Min. Co. v. Orient Min. Co. 11 Fed. 125.

See *Maderia v. Sonoma Magnesite Co.*, 20 Cal. App. 719, p. 731.
Upton v. Larkin, 7 Mont. 449.
Southern Cross, etc., Min. Co. v. Europa Min. Co., 15 Nev. 383.
Eilers v. Boatman, 3 Utah 159.
Warnock v. De Witt, 11 Utah 324.

It is a sufficient compliance with the statute where stakes and monuments are so placed upon the ground that the boundaries of the location can be traced with reasonable certainty and without any practical difficulty.

Book v. Justice Min. Co., 58 Fed. 106, p. 114.
Smith v. Newell, 86 Fed. 56, p. 57.
Walsh v. Erwin, 115 Fed. 531, p. 536.
McCulloch v. Murphy, 125 Fed. 147, p. 151.
 See *Southern Cross, etc., Min. Co. v. Europa Min. Co.*, 15 Nev. 383.
Warnock v. De Witt, 11 Utah 324.

The lines and corners of a mining claim may be sufficiently located on proper notice, though it is physically impossible to establish a monument at one corner of the claim.

Waterloo Min. Co. v. Doe, 56 Fed. 685, p. 688.
See Tiggerman v. Mrzlak, 40 Mont. 19, p. 23.

The marking of a mining claim on the ground by stakes and monuments with or without written notice, by which the boundaries of the claim can be readily traced, is sufficient.

Sturtevant v. Vogel, 167 Fed. 448, p. 453.

If a third person intending to locate a claim can readily ascertain from what has been done by the prior locator, the extent and boundaries of his claim located, then the object of the statute has been accomplished.

Maderia v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 731.
Kern Oil Co. v. Crawford, 143 Cal. 298.

A subsequent locator can not object that a prior location was not sufficiently marked on the ground at the time of its original location, provided such prior location was sufficiently marked on the ground before the subsequent locator made any location or acquired any rights in such claim.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 536.
Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 681.
Sharkey v. Candiani, 48 Oreg. 112, p. 122.
See McGinnis v. Egbert, 8 Colo. 41.

Crown Point Gold Min. Co. v. Crismo, 39 Oreg. 364.

The statute does not in terms require the boundaries to be marked, but what it does require is that the location shall be so marked that its boundaries can be readily traced, and while this may be best done by placing stakes or monuments at the corners of the location, yet it may be accomplished by the marking of a center line.

Gleeson v. Martin White Min. Co., 13 Nev. 442.
Golden Fleece Min. Co. v. Cable Consol. Min. Co., 12 Nev. 312.
Doubted in Maderia v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 728.

9. SUFFICIENT MARKINGS—INSTANCES.

If the center line of the location of a lode claim lengthwise along the lode is marked by a prominent stake or monument at each end thereof, and there is placed upon one or both of these a written notice showing that the locator claims the length of the line upon the lode from stake to stake, and a certain specified number of feet in width on each side of the center line, then the location of the claim is so marked that the boundaries may be readily traced.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 532.
Loefer v. Gardiner, 1 Alaska 641, p. 643.
 See *Nome v. Steelsmith*, 1 Alaska 121, p. 127.

A mining claim must have its boundaries so marked upon the surface as to be easily traced by means of six substantial stakes, one at each corner, and one at the center of each side line, and such stakes must be sunk in the ground, the corner stakes hewed on the inside, and the side stakes hewed on the inside, the sides toward the claim.

Cheesman v. Shreeve, 40 Fed. 787, p. 788.

See *Tiggerman v. Mrzlak*, 40 Mont. 19, p. 23

The posting of stakes or building of monuments at the four corners of the location on the surface of a mining claim upon a comparatively barren hillside is a sufficient compliance with the statute.

Book v. Justice Min. Co., 58 Fed. 106, p. 114.

The location is distinctly marked on the ground so that the boundaries of the claim can be readily traced where the locator blazed a pine tree standing 300 feet north of the southeast corner of the claim, planted a stake at such southeast corner, another stake at the southwest corner, and still another at the northwest corner, and the claim was described as situated on the northern side of Grizzly Mountain, in a certain named county, about 3 miles north of another located mine bounded and described by giving a starting point and the distances between the various stakes.

Walsh v. Erwin, 115 Fed. 531, p. 536.

The boundaries of a claim are sufficiently marked or designated by placing at one corner a substantial stake or monument, and by placing at each of the other corners and near the center of each end line good and substantial stakes, so that as marked upon the ground the boundaries could be readily traced, and in such case no reference need be made to natural objects or monuments, as it is not always possible to connect a location with a natural object.

McIntosh v. Price, 121 Fed. 716, p. 720.

See *Hammer v. Garfield Min. Co.*, 130 U. S. 291.

Tiggerman v. Mrzlak, 40 Mont. 19, p. 23.

Under this section there must be a bearing, and the distance given from each established corner of the survey of a mining claim to the corresponding corner of the location, and if the survey and location are identical the fact should be stated.

Dephanger, In re, 1 L. D. 581, p. 582.

The boundaries of a mining claim are properly marked where all the corners are properly set and marked with the official survey, and a report is made in proper form and verified according to rule, and proof that third parties did not find upon the ground either the monuments as to the corner or a posting of the plat, as required, is not sufficient to establish the fact that the corners were not in existence at the date of the application, or that the notice was not posted as alleged.

Byrne v. Slauson, 20 L. D. 43, p. 44.

It is sufficient where stakes and mounds at the corners of the claim were prominent and permanent monuments by which, together with the descriptions in the notices, the claim could be readily identified and where the markings were sufficient so that the boundaries can be readily traced.

Du Prat v. James, 85 Cal. 555, p. 559.

Setting permanent stakes or stones at the four corners of a mining claim is a sufficient marking.

Holdt v. Hazard, 10 Cal. App. 440, p. 444.

See *Oregon King Min. Co. v. Brown*, 119 Fed. 48.

Green v. Gavin, 10 Cal. App. 330.

Howeth v. Sullenger, 113 Cal. 547, p. 550.

Gleeson v. Martin White Min. Co., 13 Nev. 442.

Southern Cross, etc., Min. Co. v. Europa Min. Co., 15 Nev. 383.

Seidler v. LaFave, 5 N. Mex. 44.

Where two mining claims were each marked at the four corners by substantial stakes planted on two sides, two of such stakes being at the ends of the dividing line and common to both claims, and the blazing of an oak tree on two sides, on which the location notices were posted describing the two claims by courses and distances, and upon each side of which tree the ledge was uncovered, and deep cuts were subsequently made in the ledge, and a house built near the dividing line in which the locators' working men lived, these were sufficient markings of the claim upon the ground.

Eaton v. Norris, 131 Cal. 561, p. 564.

See Howeth v. Sullenger, 113 Cal. 547.

Southern Cross Min. Co. v. Europa, etc., Min. Co., 15 Nev. 383.

Seidler v. Lafave, 4 N. Mex. 369, p. 371.

Setting stakes at the four corners of a mining claim is a sufficient marking of the boundaries of the location.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 456.

See Worthen v. Sidway, 72 Ark. 215, p. 223.

Conway v. Hart, 129 Cal. 480.

Golden Fleece, etc., Min. Co. v. Cable Consol., etc., Min. Co., 12 Nev. 312.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 262.

Brockbank v. Albion Min. Co., 29 Utah 367.

The fact that one mining claim is marked with stakes upon the ground of another mining claim does not invalidate such overlapping claim where the locator does not intend to claim the portion of the premises overlapping the other claim.

Perego v. Erwin, 85 Fed. 904, p. 906.

Doe v. Tyler, 73 Cal. 21.

West Granite Mountain Min. Co. v. Granite Mountain Min. Co., 7 Mont. 356.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 130.

10. INSUFFICIENT MARKINGS—INSTANCES.

A mining location made by a stake placed upon the ground, claiming 500 feet one way and 1,000 feet another way on the vein discovered, with 300 feet on each side of the vein, is not a sufficient marking of the boundaries of the claim.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 458.

Book v. Justice Min. Co., 59 Fed. 106.

Geleich v. Moriarity, 53 Cal. 217.

Golden Fleece, etc., Min. Co. v. Cable Consol., etc., Co., 12 Nev. 312.

Gleeson v. Martin White Min. Co., 13 Nev. 442.

See Holland v. Mt. Auburn Gold Quartz Min. Co., 53 Cal. 149.

Newbill v. Thurston, 65 Cal. 419.

Carter v. Bacigalupi, 83 Cal. 187.

Howeth v. Sullenger, 113 Cal. 547.

Under some circumstances the marking of a mining claim by substantial stakes at the four corners may not of itself be sufficient.

Eaton v. Norris, 131 Cal. 561, p. 565.

See Taylor v. Middleton, 67 Cal. 656.

The requirement is not complied with by a mere reference in the location notice to the legal subdivisions of the public survey.

White v. Lee, 78 Cal. 593, p. 595.

Saxton v. Perry, 47 Colo. 263, p. 273.

See Anthony v. Jilison, 83 Cal. 296, p. 299.

Temescal Oil & Dev. Co. v. Salcido, 137 Cal. 211, p. 212.

The corner stakes of a mining location should not be so far apart as to include an area considerably greater than the size of the claim as described in the posted notice, or greater than the law allows; but where the country is broken and the view from one corner to another is obstructed by intervening gulches and timber and brush, it is necessary to blaze the trees along the lines or cut away the brush, and set more stakes

at some distance that they may be seen from one to another, or dig the ground up in a way to indicate the lines so that the boundaries may be readily traced.

Maderia v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 727.
See *Ledoux v. Forester*, 94 Fed. 600.

A mineral location marked at one corner by building a monument of rock and placing a stake in it, the stake not driven into the ground, and marking another corner by breaking off the top of a small dead tree 3 or 4 inches in diameter and making a mound of earth, piling some small boulders about the base of the tree, in an extremely broken and rough country densely covered with brush, and at points far away from where the real corners should have been placed, and where there are other monuments of like character, with nothing to identify them as corners of a particular claim, and the posting of a notice on a picket fence and tacking a notice on a board nailed on a tree nearly 300 feet beyond the proper point, are not such markings on the ground so that the boundaries of a mining claim can be readily traced within the meaning of this section.

Maderia v. Sonoma Magnesite Co., 20 Cal. App. 719, p. 731.

11. FAILURE TO COMPLY WITH REQUIREMENT—EFFECT.

A mining claimant can not defeat the rights of a subsequent locator if he has failed to comply with the statute and has not distinctly marked his claim on the ground so that its boundaries can be readily traced.

Holland v. Mount Auburn Gold Quartz Min. Co., 53 Cal. 149, p. 151.
Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 469.

If a claimant fails to show compliance with the provisions of this section as to marking his claim upon the ground and recording it, a surveyor general should decline to issue an order for an official survey.

Monarch of the North Claim, In re, Copp's Min. Lands 304, p. 307.

12. CHANGE OF BOUNDARIES—INTERVENING RIGHTS.

A locator can not change or extend the boundaries of a mining claim for the fraudulent purpose of obtaining possession of an adjoining mining claim located in good faith, and the entry upon ground by a locator without a superior right for the purpose of appropriating by an overlapping location makes him an intruder upon the existing claim.

Hall v. McKinnon, 193 Fed. 572, p. 580.
See *Biglow v. Conradt*, 159 Fed. 868.

Where rights have accrued to third persons in respect to some part of the land covered by a prior location, the prior locator can not make a complete and radical change in his boundary lines as against the rights of such third persons.

Croesus Min., etc., Co. v. Colorado Land & Min. Co., 19 Fed. 78, p. 81.

The lines of a mining claim are fixed by the monuments on the ground and can not be changed so as to interfere with other claims subsequently located.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 329.

It is better that the boundary planes should be definitely determined by the lines of the surface location than that they should be subject to perpetual readjustment according to subterranean developments made by mine workings, as these would create great uncertainty in titles.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 590.

13. DESTRUCTION OF MARKS OR BOUNDARIES.

When a location is once sufficiently marked on the surface so that its boundaries can be readily traced, and all other acts of location are performed as required by law, the right of possession is fully vested in the locator, and he can not be divested of this right by the removal or obliteration or destruction of the monuments, stakes, marks, or notices done without his fault, while he continues to perform the necessary work upon the claim.

Book v. Justice Min. Co., 58 Fed. 106, p. 114.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.
 McEvoy v. Hyman, 25 Fed. 596.
 Justice Min. Co. v. Barclay, 82 Fed. 554, p. 561.
 Smith v. Newell, 86 Fed. 56, p. 57.
 Credo Min., etc., Co. v. Highland Min., etc., Co., 95 Fed. 911, p. 915.
 Walsh v. Erwin, 115 Fed. 531, p. 537.
 Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, pp. 217, 218.
 McCulloch v. Murphy, 125 Fed. 147, p. 151.
 Sturtevant v. Vogel, 167 Fed. 448, p. 453.
 See Gillis v. Downey, 85 Fed. 483, 486.

Where a mining claim has been properly located and stakes set by which the boundaries may be marked, the location will not be made invalid because one or more of the stakes as originally set have disappeared.

Book v. Justice Min. Co., 58 Fed. 106, p. 112.

While this section requires a location to be so marked upon the ground that its boundaries can be readily traced, yet it does not require the maintenance of such marking and the claim is not invalidated though the stakes marking it may entirely disappear, and the claim is not subject to subsequent location.

Perego v. Erwin, 85 Fed. 904, p. 907.
 Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, pp. 217, 218.

The rights of a locator of a mining claim can not be affected or defeated by a change of the monuments or posts by a stranger, and a subsequent locator is bound to inquire or to take notice at his peril of any existing posts or monuments duly marked, lettered, and showing the name of a mining location.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 418.
 See Eilers v. Boatman, 3 Utah 159, p. 164.

Whatever may be the duty of a locator of a mining claim as to maintaining his stakes where he has once set them up in the autumn, he can not be expected or required to renew them in the January following.

McEvoy v. Hyman, 25 Fed. 596, p. 598.

H. DESCRIPTION OF LOCATION OR CLAIM.

1. PURPOSE OF SECTION.
2. SUFFICIENCY OF DESCRIPTION IN NOTICE OF RECORD.
3. REFERENCE TO OBJECTS OR MONUMENTS.
4. INSUFFICIENT REFERENCE TO OBJECTS OR MONUMENTS.
5. PERMANENT MONUMENTS—QUESTION OF FACT.
6. PERMANENT MONUMENTS—WHAT CONSTITUTES.
7. EXISTING MINING CLAIMS AS PERMANENT MONUMENTS.
8. LOCATION OF NATURAL OBJECT OR PERMANENT MONUMENT.
9. MINERAL MONUMENTS.
10. DISCREPANCIES IN DESCRIPTION—MONUMENTS CONTROL.
11. MISTAKE OR VARIANCE—RECORD NOT CONCLUSIVE.
12. SWINGING CLAIMS.

1. PURPOSE OF SECTION.

The provisions of this section are designed to secure a definite description of the mining claim, a description so plain that the claim can be readily ascertained, and the naming of some natural object or permanent monument is for that purpose.

Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 299.

Bennett v. Harkrader, 158 U. S. 441, p. 444.

Smith v. Cascaden, 148 Fed. 792, p. 793.

Butler v. Good Enough Min. Co., 1 Alaska 246, p. 251.

Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Min. Co., 14 Idaho 516, p. 525.

The Land Department has always been liberal in its rulings as to the particular requirements of this section, as it is not to be supposed that pioneers and settlers upon the Government lands and mineral prospectors following their vocations among the mountains are versed in the intricacies of the law, or with experience and knowledge sufficient to warrant their being charged with a rigid and technical compliance with all its requirements.

Webb v. Carlon, 148 Cal. 555, p. 557.

A construction should not be given either to the acts of Congress or the rules and regulations of miners which would invalidate the location because of error in the call for a course.

Smith v. Newell, 86 Fed. 56,

See Book v. Justice Min. Co., 58 Fed. 106.

The purpose of the provision as to permanent monuments is to give something in the nature of an initial point, and that in following the course and distance given the claim may be located with reasonable certainty.

Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 180.

See Gilpin County Min. Co. v. Drake, 8 Colo. 586.

Drummond v. Long, 9 Colo. 538.

2. SUFFICIENCY OF DESCRIPTION IN NOTICE OR RECORD.

When the recorded notice of a mining claim gives such a description of the location that a person could find the claim as described on the ground with reasonable certainty by going to the natural objects or permanent monuments referred to, then such notice is sufficient.

Smith v. Cascaden, 148 Fed. 792, p. 794.

The essential facts required by this section, such as the name of the locator, the date of the location, the description of the claim as to its mineral veins, and the boundary with reference to some natural object or permanent monument, must be sworn to by the locator.

McBurney v. Berry, 5 Mont. 300, p. 302.

See Hoffman v. Beecher, 12 Mont. 489, p. 497.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 116.

It is a sufficient compliance with this section if the description of the locus of a mining claim is appended to the location notice when it is recorded.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 466.

See Seidler v. Lafave, 4 N. Mex. 369, p. 372.

Seidler v. Lafave, 5 N. Mex. 44.

In the location of a mining claim the name of the claim need not be marked on the stakes unless the boundaries can not be readily traced without it, and especially where the location notice giving all the information that marks on corner stakes would give was nailed on the discovery stake.

Smith v. Newell, 86 Fed. 56, p. 57.

Bingham Amalgamated Copper Co. v. Ute Copper Co., 181 Fed. 748, p. 749.

A declaratory statement under a Montana statute prior to the adoption of the Political Code of 1895 was sufficient if it described the mining claim in the manner provided by this section.

Purdum v. Laddin, 23 Mont. 386, p. 390.

The description given in a location notice, while describing the general locality of the claim, is not sufficient if it does not show such an absolute identity of the claim that it can be known from the data given therein.

Dyer v. Jackson, 6 C. L. O. 171.

3. REFERENCE TO OBJECTS OR MONUMENTS.

The records of mining claims are required by this statute to contain the name or names of the locator, the date of the location, and a description of the claim by such reference to some natural object or permanent monument as will identify the claim.

Butte City Water Co. v. Baker, 196 U. S. 119, p. 122.

Meydenbauer v. Stevens, 78 Fed. 787, p. 792.

Gilpin County Min. Co. v. Drake, 8 Colo. 586, p. 589.

Drummond v. Long, 9 Colo. 538, p. 539.

Brown v. Levan, 4 Idaho 794, p. 800.

Clearwater Short Line R. Co. v. San Garde, 7 Idaho 106.

Morrison v. Regan, 8 Idaho 291, p. 300.

See Faxon v. Barnard, 4 Fed. 702.

Gleeson v. Martin White Min. Co., 13 Nev. 442.

Baxter Mountain Min. Co. v. Patterson, 3 N. Mex. 179, p. 181.

The reference required by this section to some natural object or permanent monument to identify the claim must be such as to furnish a reasonable certainty that the locus of the claim has not been and could not well be changed.

Brown v. Levan, 4 Idaho 794, p. 806.

Morrison v. Regan, 8 Idaho 291, p. 301.

Humphreys v. Idaho Gold Min., etc., Co., 21 Idaho 126, p. 136.

The record of a mining claim must contain a description by reference to some natural object or permanent monument.

Hansen v. Fletcher, 10 Utah 266, p. 270.

The ties of mining claims to some natural object or permanent monument are not intended to be as accurate and correct as they would be if tied by a competent surveyor, and the object of this requirement apparently was for the purpose of directing attention in a general way to the vicinity or locality in which the location was to be found.

Bismark Mtn. Gold Min. Co. v. North Sunbeam Gold Min. Co., 14 Idaho 516, p. 525.

Humphreys v. Idaho Gold, etc., Co., 21 Idaho 126, p. 136.

See Flavin v. Mattingly, 8 Mont. 242.

Farmington Gold Min. Co. v. Rhymney, 20 Utah 363.

The statute requires a reference in the record to a permanent monument, but it does not indicate what that monument shall be nor where it shall be located as to being on or off the claim, nor at the point of beginning in the description or any intermediate point, but it is essential that it be a monument permanent in its character and referred to in such manner as will identify the claim so persons looking for mineral deposits may, with the aid of the notice, find the monument, and from it and the description in the notice trace out the extent of the claim.

Seidler v. Lafave, 4 N. Mex. 369, p. 371.

Seidler v. Lafave, 5 N. Mex. 44.

See North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.

Jupiter Min. Co. v. Bodie Consol. Min., etc., Co., 11 Fed. 666.

Mt. Diablo Min., etc., Co. v. Callison, 7 Fed. Cas. 918.

Quimby v. Boyd, 8 Colo. 104.

Stakes driven into the ground are the most certain means of identification of mining claims when there are no permanent monuments or natural objects other than rocks or neighboring hills. The reference to such monuments or objects required by the statute applies only when such reference can be made.

Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 299.

Bennett v. Harkrader, 158 U. S. 441, p. 444.

Ledoux v. Forester, 94 Fed. 600.

Vogel v. Warsing, 146 Fed. 949, p. 952.

Worthen v. Sidway, 72 Ark. 215, p. 223.

Eaton v. Norris, 131 Cal. 561, p. 565.

Hansen v. Fletcher, 10 Utah 266, p. 271.

See McCarthy v. Phelan, 132 Cal. 404, p. 405.

The provision of this section that records of a mining claim shall contain such a description of the claim by reference to a natural object or permanent monument as will identify it, is supplemented by the statute of Colorado providing that the location certificate of a mining claim shall contain such a description as shall identify the claim with reasonable certainty, and these provisions are mandatory and are not to be given a construction so technical as will result in imposing upon locators an unnecessary burden or requirement with which they would be unable to comply; but a reference to a natural object or permanent monument in a location certificate is not conclusive that the law has been complied with.

Londonderry Min. Co. v. United Gold Mines Co., 38 Colo. 480, p. 482.

Parol evidence in case of uncertain and disputed boundaries is not admissible to show a stump as a monument where the mining certificate calls for a post.

Pollard v. Shively, 5 Colo. 309, p. 318.

Duncan v. Eagle Rock Min. Co., 48 Colo. 569, p. 581.

4. INSUFFICIENT REFERENCE TO OBJECTS OR MONUMENTS.

A mining claim described as situated on "Baxter Mountain, west of Baxter Gulch, bounded on the west by Homestake Lead, on the south end by Silver Cliff Claim, and on the north end by the Rip Van Winkle Claim," is not a sufficient description and evidence is not admissible to show that the mining claims referred to had upon their boundary lines lasting and permanent monuments.

Baxter Mountain Gold Min. Co. v. Patterson, 3 N. Mex. 179 (Johnson).

See Baxter Mountain Gold Min. Co. v. Patterson, 3 N. Mex. 269 (Gildersleeve).

Seidler v. Lafave, 4 N. Mex. 369, p. 372.

Seidler v. Maxfield, 4 N. Mex. 374.

A claim described as being "about 5 miles from the Denver & Rio Grande Railroad in Utah County" is not a sufficient description under this section.

Darger v. LeSieur, 8 Utah 160, p. 163.

See Faxon v. Barnard, 4 Fed. 702.

Darger v. LeSieur, 9 Utah 192.

The natural objects or permanent monuments required by the statute mean substantial objects that can be seen by the eye and made the basis of a survey.

Baxter Mountain Gold Min. Co. v. Patterson, 3 N. Mex. 179 (Johnson).

5. PERMANENT MONUMENTS—QUESTION OF FACT.

What are natural objects or permanent monuments within the meaning of this section are often questions of fact.

Vogel v. Warsing, 146 Fed. 949, p. 951.

See Hammer v. Garfield Min., etc., Co., 130 U. S. 291.

North Nooday Min. Co. v. Orient Min. Co., 1 Fed. 522.

McEvoy v. Hyman, 25 Fed. 596.

Flavin v. Mattingly, 8 Mont. 242.

Courts construe the section respecting the location of mining claims with much liberality, and the sufficiency of a location with reference to natural objects or permanent objects is a question of fact.

Farmington Gold Min. Co. v. Rhymney Gold, etc., Co., 20 Utah 363, p. 370.

See Erhardt v. Boaro, 113 U. S. 527.

Bennett v. Harkrader, 158 U. S. 441.

Mount Diablo Min., etc., Co. v. Callison, 7 Fed. Cas. 918; 5 Sawy. 439.

Flavin v. Mattingly, 8 Mont. 242.

Gamer v. Glenn, 8 Mont. 371.

Brady v. Husby, 21 Nev. 453.

Wilson v. Triumph Consol. Min. Co., 19 Utah 66.

Wells v. Davis, 22 Utah 322, p. 327.

Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 167.

The natural objects and permanent monuments required by this section, as well as by the statute of New Mexico, must be such as will enable a person to locate the claim by means of the references to such natural objects and permanent monuments.

Baxter Mountain Gold Min. Co. v. Patterson, 3 N. Mex. 179, p. 181.

See Southern Cross Min., etc., Co. v. Europa Min. Co., 15 Nev. 383, p. 385

6. PERMANENT MONUMENTS—WHAT CONSTITUTES.

Stone monuments, blazed trees, the confluence of streams, the point of intersection of well-known gulches, ravines, or lodes, permanent buttes, hills, as well as the names of adjoining mining claims, all come within the requirements of this section as to natural objects or permanent monuments.

Quimby v. Boyd, 8 Colo. 194, p. 201.

Howeth v. Sullenger, 113 Cal. 547, p. 555.

Drummond v. Long, 9 Colo. 538, p. 540.

See North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.

Carter v. Bacigalupi, 83 Cal. 187, p. 188.

Conway v. Hart, 129 Cal. 480, p. 484.

Gilpin County Min. Co. v. Drake, 8 Colo. 586.

A tree is a fixed natural object and permanent monument, as required by this section, and when so used should be marked in some manner as to be readily identified, unless possessing peculiarities different from trees in general.

Quimby v. Boyd, 8 Colo. 194, p. 203.

A prospect hole, rock, monument, or stakes are within the meaning of the law of permanent monuments.

Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Min. Co., 14 Idaho 516, p. 525.

See Hansen v. Fletcher, 10 Utah p. 266.

A natural object as required by this section is well understood, and includes trees, prominent buttes or hills, the confluence of streams, the point of intersection of well-known gulches, roads, and ravines.

Seidler v. Lafave, 4 N. Mex. 369, p. 371.

Seidler v. Lafave, 5 N. Mex. 44.

See North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.

Quimby v. Boyd, 8 Colo. 194.

Permanent monuments may exist before a mining location is made, or may be erected for the purpose of tying the claim to them, but courses and distances from such monuments of a discovery site, or to corner stakes, or some other object on the mining claim, must be stated with reasonable accuracy.

Brown v. Levan, 4 Idaho 794, p. 806.

See Clearwater Short Line R. Co. v. San Garde, 7 Idaho 106, p. 109.

Morrison v. Regan, 8 Idaho 291, p. 300.

The permanent monument required by this section may be a mountain, hill, ridge, hogback, butte, canyon, gulch, river, stream, waterfall, cascade, lake, inlet, bay, arm of the sea, stakes, posts, monuments of stone or boulders, shafts, drifts, tunnels, open cuts, or well-known adjoining patented claims.

Meydenbauer v. Stevens, 78 Fed. 787, p. 792.

Permanent posts or stakes may be permanent monuments.

Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, p. 179.

See Hammer v. Garfield Min., etc., Co., 130 U. S. 291.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.

Eaton v. Norris, 131 Cal. 561.

Brockbank v. Albion Min. Co., 29 Utah 367, p. 369.

7. EXISTING MINING CLAIMS AS PERMANENT MONUMENTS.

This section is sufficiently complied with by the record of a notice which describes the claim by certain boundaries as being north of another named patented claim, as this is such a description as will identify it by reference to some natural object or permanent monument.

Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, p. 480.

Smith v. Newell, 86 Fed. 56, p. 57.

Cosmopolitan Min. Co. v. Foote, 101 Fed. 518, p. 519.

Walsh v. Erwin, 115 Fed. 531, pp. 532, 536.

Tonopah & Salt Lake Min.-Co. v. Tonopah Min. Co., 125 Fed. 400.

Porter v. Tonopah North Star Tunnel, etc., Co., 133 Fed. 756.

Smith v. Cascaden, 148 Fed. 792, p. 794.

Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 537.

Morrison v. Regan, 8 Idaho 291, p. 303.

Upton v. Larkin, 7 Mont. 449.

Gamer v. Glenn, 8 Mont. 371.

Bramlett v. Flick, 23 Mont. 95, p. 102.

Slothower v. Hunter, 15 Wyo. 189, p. 200.

See Kinney v. Fleming, 6 Ariz. 263.

Carter v. Bacigalupi, 83 Cal. 187, p. 188.

Duncan v. Fulton, 15 Colo. App. 140.

Flynn Group Min. Co. v. Murphy, 18 Idaho 266, p. 278.

Riste v. Morton, 20 Mont. 139, p. 142.

Hammer v. Garfield Min. Co., 130 U. S. 291, p. 292, 298.

Mining claims in Alaska are frequently numbered or marked by reference to existing claims so definitely established as to be used as the initial claim and may be used by other locators as a permanent monument.

Butler v. Good Enough Min. Co., 1 Alaska 246, p. 250.

The requirement of a reference to some natural object or permanent monument is satisfied either by reference to certain kind of trees or to some existing lode claim.

Upton v. Larkin, 7 Mont. 449, p. 454.

See Russell v. Chumasero, 4 Mont. 309.

Sanders v. Noble, 22 Mont. 110, p. 117.

The description by reference to an adjacent existing mining claim is a sufficient reference to a permanent monument to allow a location notice to be introduced in evidence, and it then becomes a matter of proof as to whether such adjoining claim is a permanent monument.

Dillon v. Baylies, 11 Mont. 171, p. 178.

An Alaskan mining claim described as "No. 13A Below Discovery on Cleary Creek" is a sufficient description, as parol evidence is admissible to show the exact location and to show that the claim does not border upon Cleary Creek, but is in the first tier of bench claims, having one claim between it and the creek, and such claim is known as "No. 13A Below Discovery."

Smith v. Cascaden, 148 Fed. 792, p. 794.

A discovery cut may be properly recognized as a monument so far as to include it within a claim in the notice of location.

McEvoy v. Hyman, 25 Fed. 596, p. 599.

8. LOCATION OF NATURAL OBJECT OR PERMANENT MONUMENT.

The natural objects or permanent monuments referred to in the record of the location of a mining claim are not necessarily required to be on the ground located, and such natural object may consist of any fixed natural object, and the permanent monument may consist of a prominent post or stake firmly planted in the ground or of a shaft sunk in the ground.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 534.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 679.

Talmadge v. St. John, 129 Cal. 430, p. 435.

Quimby v. Boyd, 8 Colo. 194, p. 201.

Jackson v. Dines, 13 Colo. 90, p. 94.

O'Donnell v. Glenn, 8 Mont. 248, p. 254.

See Holdt v. Hazard, 10 Cal. App. 440, p. 444.

9. MINERAL MONUMENTS.

The establishment of United States mineral monuments was doubtless to provide for more accurate description of mining claims and their locations than could be given by reference to natural objects merely, in localities to which the regular public surveys had not been extended, and the course and length of a line connecting the claim with such mineral monuments should be given in the notice.

Tennessee Lode, In re, 7 L. D. 392, p. 394.

Hoffman v. Venard, 14 L. D. 45.

Broad Ax Lode, In re, 22 L. D. 244.

Sulphur Springs Quicksilver Mine, In re, 22 L. D. 715.

Hallett & Hamburg Lodes, In re, 27 L. D. 104, pp. 108, 109.

Wax, In re, 29 L. D. 592.

10. DISCREPANCIES IN DESCRIPTION—MONUMENTS CONTROL.

The stakes and monuments set, from which the boundaries of a mining claim may be marked or traced, will control the courses specified in the notice of location.

Book v. Justice Min. Co., 58 Fed. 106, p. 115.

See McEvoy v. Hyman, 25 Fed. 596.

Pollard v. Shively, 5 Colo. 309.

Cullacott v. Cash Gold, etc., Min. Co., 8 Colo. 179.

San Miguel Consol. Gold Min. Co. v. Bonner, 33 Colo. 207, p. 212.

The principle that courses and distances give away to fixed monuments applies to the description of a mining claim, and the record of such claim is sufficient when it contains directions which, taken in connection with the marking of the claim on the ground, will enable a person to distinguish the premises located from the public mineral lands open to exploration.

McEvoy v. Hyman, 25 Fed. 596, p. 599.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 585.

Smith v. Newell, 86 Fed. 56, p. 58.

See Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, pp. 217, 218.

Zerres v. Vanina, 134 Fed. 610, p. 612.

Pollard v. Shively, 5 Colo. 309.

Upton v. Larkin, 7 Mont. 449.

Gamer v. Glenn, 8 Mont. 371.

Brady v. Husby, 21 Nev. 453.

The description of the location as recorded is binding on the locator, but if the calls as to distances and courses set out vary from the markings actually made on the ground, the latter will prevail.

Meydenbauer v. Stevens, 78 Fed. 787, p. 792.

Price v. McIntosh, 1 Alaska 286, p. 289.

See *Bennett v. Harkrader*, 158 U. S. 441.

Steen v. Wild Goose Min. Co., 1 Alaska 255.

In descriptions of mining claims courses and distances must yield to objects and monuments, and these can not be rejected as false and mistaken in favor of a mere course or distance, but a false or mistaken particular in a conveyance may be rejected where there are definite particulars sufficient to locate the grant.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 585.

See *Book v. Justice Min. Co.*, 58 Fed. 106, p. 115.

The rule that in the location or description of a mining claim monuments shall control courses and distances is recognized only in cases where the monuments are clearly ascertained, but where there is doubt as to the monuments as well as to the courses or distances, then there can be no reason for saying that monuments shall prevail rather than the courses given in a patent.

Thallman v. Thomas, 102 Fed. 935, p. 936.

Thallman v. Thomas, 111 Fed. 277, p. 283.

Duncan v. Eagle, etc., Min., etc., Co. 48 Colo. 569, p. 580.

In case of a failure or discrepancy between the stakes and monuments on the ground of a mining claim and the recorded location certificate the former will prevail as superior evidence of the particular ground located and its boundaries.

Sturtevant v. Vogel, 167 Fed. 448, p. 452.

11. MISTAKE OR VARIANCE—RECORD NOT CONCLUSIVE.

Where there is a variance between the calls of a location notice of a mining claim and the lines of the claim as actually staked upon the ground, and the monuments and stakes fully comply with all statutory requirements and are in place, the locator, in the absence of fraud, is not limited to the claim as described of record, unless a subsequent locator has knowledge of the description contained in such location notice and act thereon, as in such case it is the same as if no location notice had been made or recorded.

Cardoner v. Stanley Consol. Min., etc., Co., 193 Fed. 517, p. 520.

See *Sturtevant v. Vogel*, 167 Fed. 448, p. 453.

A notice posted on a mining claim will not invalidate the location where the word "northerly" is used instead of the word "northeasterly," and in such case the word "northerly," taken with the surrounding circumstances and conditions, will be interpreted as meaning due north.

Book v. Justice Min. Co., 58 Fed. 106, p. 115.

The mining laws of a district giving a locator the right to place his stake at the point he supposes and claims a ledge to be and permits him to hold 100 feet on each side, with all the ores and minerals therein, protects him upon newly discovered croppings against any error in selecting the spot to place his stake and notice.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

When a miner has staked, as the rules require, the number of feet he claims along the lode on which he sets his stake, and refers all persons concerned to the laws of the district by claiming all the privileges granted by such laws, and such laws entitle him to hold 100 feet on each side of his lode, then the length and breadth of his claim are fixed with reasonable certainty.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

See *Gleeson v. Martin-White Min. Co.*, 13 Nev. 442.

12. SWINGING CLAIMS.

The time allowed by the State statutes after making discovery and posting the notice was intended to give the discoverer time to explore the vein or lode and find out its strike, and thus enable him to lay his claim; and he could, during such statutory period, swing the claim in any direction, so as to extend it along the vein to the exclusion of any other location made in the meantime, within a circular area, the diameter of which is equal to the longest distance claimed from the point of discovery; but this can not destroy the rights of junior locators except so far as the conflict extends, and to the extent of any such conflict any subsequent location is invalid.

Sanders v. Noble, 22 Mont. 110.

Bramlett v. Flick, 23 Mont. 95.

Helena Gold & Iron Co. v. Baggaley, 34 Mont. 464, p. 473.

Street v. Delta Mtn. Co., 42 Mont. 371, p. 383.

Ferris v. McNally, 45 Mont. 20, p. 27.

See Belk v. Meagher, 104 U. S. 279.

Erhardt v. Boaro, 113 U. S. 527.

Under this section, as supplemented by sections 3610 and 3612 of the Political Code of Montana, the locator of a mining claim within that State has 90 days, after posting the required notice at the point of discovery, in which to file his declaratory statement giving a description of the claim sufficient to identify it and may, within such time, swing his claim in any direction to correspond with the course of the vein as developed after the original discovery and within such 90 days.

Sanders v. Noble, 22 Mont. 110, p. 139.

Bramlett v. Flick, 23 Mont. 95.

See Mining Co. v. Tarbet, 98 U. S. 463.

Gleeson v. Martin White Min. Co., 13 Nev. 442.

Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350.

Bullion, Beck & Champion Min. Co. v. Eureka Hill, etc., Min. Co., 5 Utah 3, p. 70 (dissenting opinion).

The description of a mining claim in a location notice may be changed if other ground is not embraced, up to the date such location notice becomes a record.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 458.

The locator of a mining claim, so far as the surface ground is concerned, is bound by the lines designated upon the surface, and he can not swing his surface location so as to claim any other surface ground.

Golden Fleece Gold & Silver Min. Co. v. Cable Consol., etc., Min. Co., 12 Nev. 312, p. 331.

See Nicholls v. Lewis & Clark Min. Co., 18 Idaho 224, p. 236.

Sanders v. Noble, 22 Mont. 110, p. 139.

Bullion, Beck & Champion Min. Co. v. Eureka Min. Co., 5 Utah 3, p. 70 (dissenting opinion).

I. ANNUAL LABOR OR REPRESENTATION WORK.

1. CONSTRUCTION OF SECTION—PROVISIONS MANDATORY.
2. PURPOSE OF REQUIREMENT—EVIDENCE OF GOOD FAITH.
3. PERFORMANCE A CONDITION TO POSSESSION BUT NOT PATENT.
4. AMOUNT OF WORK REQUIRED.
5. VALUE OF WORK OR IMPROVEMENTS—DETERMINATION.
6. LOCAL REGULATIONS—EFFECT AND VALIDITY.
7. WHO MAY PERFORM WORK AND MAKE IMPROVEMENTS.
8. TIME FOR PERFORMANCE OF WORK OR MAKING IMPROVEMENTS.
9. CHARACTER OF WORK OR IMPROVEMENTS GENERALLY.
10. LABOR OR IMPROVEMENTS FOR DEVELOPING CLAIM.

11. SERVICES OF WATCHMAN.
12. TRAVELING EXPENSES.
13. DEVELOPMENT WORK AND IMPROVEMENTS OUTSIDE OF CLAIM.
14. KINDS OF WORK OR IMPROVEMENTS OUTSIDE OF CLAIM.
15. GENERAL SYSTEM OF DEVELOPMENT WORK FOR GROUP CLAIMS.
16. DEVELOPMENT WORK AND IMPROVEMENTS FOR GROUP CLAIMS.
17. VALUE OF WORK OR IMPROVEMENTS ON ONE OF GROUP CLAIMS.
18. CLAIMS HELD IN COMMON—CONTIGUOUS CLAIMS.
19. INSUFFICIENT DEVELOPMENT WORK OR IMPROVEMENTS.
20. TUNNEL CONSTRUCTION WORK.
21. NO WORK REQUIRED AFTER APPLICATION AND ENTRY.
22. FAILURE TO PERFORM WORK—EFFECT.
23. RESUMPTION OF WORK—MEANING AND EFFECT.
24. PROOF OF PERFORMANCE OF WORK.
25. PERFORMANCE OF WORK—JURISDICTION TO DETERMINE.

1. CONSTRUCTION OF SECTION—PROVISIONS MANDATORY.

The requirement that a certain amount of labor each year be done on a mining claim is imperative, and a failure to do so renders the claim subject to relocation.

Anthony v. Jilison, 83 Cal. 296, p. 301.

See Chambers v. Harrington, 111 U. S. 350, p. 353.

Morgan v. Tillotson, 73 Cal. 520.

The conditions imposed by the statute for holding and working a mining claim are wise and salutary and by no means onerous and must be complied with.

Wright v. Killian, 132 Cal. 56, p. 61.

See Russell v. Broeseau, 65 Cal. 605, p. 609.

The construction and policy of this section require every person asserting an exclusive right to a mining claim to expend something of labor or of value upon it as evidence of good faith.

Royston v. Miller, 76 Fed. 50, p. 52.

The Federal and State authorities agree that unless a locator substantially complies with the law in regard to the labor to be expended on the claim, in the manner and form provided by statute, he forfeits his right therein, as this provision of the statute is mandatory.

Zerres v. Vanina, 134 Fed. 610, p. 617.

The fulfillment of the provisions of this section lies in the performance of the labor or the making of the improvements required.

Coleman v. Curtis, 12 Mont. 301, p. 305.

2. PURPOSE OF REQUIREMENT—EVIDENCE OF GOOD FAITH.

The purpose of the law is to exact work as evidence of good faith on the part of the owner and to discourage the holding of mining claims without development or intention to develop to the exclusion of others who might improve such ground if opportunity was afforded, and accordingly the annual work must be performed by the owner, at his instance, by some one in privity with him, or by some one who holds an equitable or beneficial interest in the property, as work done by such a person will inure to the benefit of the claim.

Wailes v. Davies, 158 Fed. 667, p. 672.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.

Book v. Justice Min. Co., 58 Fed. 106.
 Godfrey v. Faust, 18 S. D. 567, p. 571.
 Eberle v. Carmichael, 8 N. M. 169.
 Anderson v. Caughey, 3 Cal. App. 22.
 Dye v. Crary, 13 N. M. 439.

The purpose of requiring work to be done on a mining claim each year was to require every person who asserted an exclusive right to his discovery or claim to expend something of labor or value upon it as an evidence of his good faith.

Chambers v. Harrington, 111 U. S. 350, p. 353.
 Good Return Min. Co., In re, 4 L. D. 221, p. 224.
 Trickey Placer, In re, 7 L. D. 52, p. 53.
 See Anthony v. Jillson, 83 Cal. 296, p. 300.

The purpose of this statute is to require the mine owner to prove his good faith by performing one hundred dollars' worth of labor on each claim each year until patent issues; but the statute does not require any particular character of labor, nor does it require that the work shall be wisely and judicially done, and it gives no direction as to how it shall be performed; and if the required amount of labor in the nature of mining is performed on the claim, whether the work is beneficial or not, there could be no forfeiture.

Wailes v. Davies, 158 Fed. 667, p. 670.

The purpose of the requirement as to annual expenditures was to obviate abuses arising in the mining regions and to prevent the accumulation of possessory titles to great areas of land upon which no work was done or improvements made for long series of years, as this retarded the progress and development of the mining industry.

Smith v. Van Clief, 6 C. L. O. 2, p. 3.

The statutory requirements as to work and labor and improvements are required as an earnest of good faith and to prevent a long occupation of mining ground without any development work being done; and if a locator in good faith expends the required amount in prospecting or developing a claim, or extracting mineral therefrom, neither the courts nor the department can refuse credit for the expenditure on the ground that some better method could have been pursued.

McCormick, In re, 40 L. D. 498, p. 503.

The object of the requirement as to the amount of labor performed on a claim, or improvements made, is that the holder of a mining claim shall give substantial guaranty of his good faith, and not from the desire on the part of the Government to obtain the money of the locator, and it would be against public policy to permit a person to hold a mining claim for years against all other persons with no design or intention to develop it; but the labor is not required to be applied in any particular manner if it is devoted to the claim.

Lockhart v. Rollins, 2 Idaho 503, p. 509.
 See McGarrity v. Byington, 12 Cal. 426.

The purpose of this section was the development of the mineral resources of the country, and to the accomplishment of this end the appropriator of the mineral domain was required to expend not less than \$100 in labor or improvements for the development of each claim in each year; but when claims were held in common the expenditure can be made upon one, as Congress intended to provide a method for the economical development of a group of continuous claims.

Hain v. Mattes, 34 Colo. 345, p. 348.

Congress required the assessment work to be done by way of a continuous annual assertion or renewal of the original claim or location, and the amount of expenditure required is too small to be of any practical consequence as a development of the claim.

Sherlock v. Leighton, 9 Wyo. 297, p. 308.
 See Mount Diablo etc. Min. Co. v. Callison, 17 Fed. Cas. 918; 5 Sawy. 439.

3. PERFORMANCE A CONDITION TO POSSESSION BUT NOT PATENT.

The performance of the requisite amount of development work is essential to the continued possession of the mining location.

Donnelly v. United States, 228 U. S. 243, p. 266.

See *Erhardt v. Boaro*, 113 U. S. 527, p. 535.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.

Chrisman v. Miller, 197 U. S. 313, p. 321.

The doing of annual assessment work is not a condition to obtaining patent, but is only a condition to the continued right of possession to an unpatented mining claim as against other and adverse claimants, and a failure to perform such work furnishes no ground for the cancellation of an entry in the absence of an adverse claim legally asserted.

McEvoy v. Megginson, 29 L. D. 164, p. 165.

See *Hughes v. Ochsner*, 27 L. D. 396, p. 398.

The annual expenditure or assessment work required by this section, while necessary to the continued maintenance of the possessory title, is not a condition to obtaining a patent.

Nielson v. Champagne Min., etc., Co., 29 L. D. 491, p. 493.

The improvements and expenditure required by this section are essentially different from those required by the following section, and by that section the expenditure of \$500 in labor or improvements is made a condition to the issuance of patent, and is therefore a matter between the applicant and the Government and the determination of this question is committed to the Land Department; and when the expenditure of \$500 has been made upon a mining claim the failure to perform the annual assessment work, as required by this section, will not prevent the issuance of patent or furnish any ground of protest.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 206.

Wolensberg, In re, 29 L. D. 302, p. 304.

Poore v. Kaufman, 44 Mont. 248, p. 256.

See *Cleveland v. Eureka Gold. Min., etc., Co.*, 31 L. D. 69.

The performance of the annual assessment work required of a locator applies to a mineral claimant in his application for a patent on proof of possession under section 2332 R. S.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 124.

If assessment work is done for the benefit of a claim, it is immaterial whether such claim is patented or unpatented.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 561.

See *McGarrity v. Byington*, 12 Cal. 426.

Hall v. Kearney, 18 Colo. 505, p. 509.

Kramer v. Settle, 1 Idaho 485.

Godfrey v. Faust, 20 S. Dak. 203, p. 207.

4. AMOUNT OF WORK REQUIRED.

This section requires that on each claim located after May 10, 1872, there shall be annually expended, in labor or improvements, \$100 until patent issues; and on claims located prior thereto an annual expenditure of \$10 for each 100 feet in length along the vein; but where the claims are held in common the expenditure may be upon any one claim.

Smelting Co. v. Kemp, 104 U. S. 636, p. 654.

Mackie, In re, 5 L. D. 199, p. 201.

McCornick, In re, 40 L. D. 498, p. 501.

Drake, In re, 5 C. L. O. 4.

Good Return Min. Co., In re, 4 L. D. 221.

To maintain a valid location \$100 worth of labor must be done or improvements made each year until a patent is issued.

- Chambers v. Harrington, 111 U. S. 350, p. 351.
 Gwillim v. Donnellan, 115 U. S. 45, p. 48.
 North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 536.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 681.
 Book v. Justice Min. Co., 58 Fed. 106, p. 112.
 Malone v. Jackson, 137 Fed. 878, p. 880.
 McCharles v. Roberts, 20 L. D. 564.
 Cassel, In re, 32 L. D. 85, p. 87.
 Wood Placer Min. Co., In re, 32 L. D. 401.
 Merrell, In re, 5 C. L. O. 5.

Congress, by these statutes, adopted the prevalent rule as to claims asserted prior to the date of the enactment, but as to those made afterwards it required \$100 worth of labor or improvements to be done in each year on every claim.

- Chambers v. Harrington, 111 U. S. 350, p. 353.
 Bishop v. Baisley, 28 Oreg. 119, p. 134.
 See Anthony v. Jillson, 83 Cal. 296, p. 300.
 Remington v. Baudit, 6 Mont. 138, p. 141.

The expenditure of \$100 in work or improvements up to the time of the issuance of the Government patent is essential without reference to the condition of the locator or the position of the claims located, except that where claims are held in common the expenditure may be made upon any one claim.

- Gird v. California Oil Co., 60 Fed. 531, p. 541.

The required annual assessment work must be performed to entitle the locator to hold his claim, otherwise it becomes a part of the public domain and subject to relocation.

- First Nat. Gold Min. Co. v. Altvater, 149 Fed. 393, p. 394.

The locator of a mining claim shall annually, until patent issues, expend not less than \$100 in labor or improvements on his claim, and he is required to do nothing more to satisfy the statute.

- Cook v. Johnson, 3 Alaska 506, p. 539.

Work on a mining claim to be available must be to the extent necessary to comply with this section.

- Leach v. Potter, 24 L. D. 573, p. 574.

This section was intended to prescribe the minimum amount of expenditure in labor or improvements which was exacted by the United States within a maximum period, and to leave to State legislatures or local mining districts the power to make such reasonable regulations as they might deem advisable within the prescribed limits.

- Northmore v. Simmons, 97 Fed. 386, p. 387.
 See Sissons v. Sommers, 24 Nev. 379.

A locator of a placer claim may or may not work the claim at his option and may prolong indefinitely his possessory right by performing the required statutory assessment work or by making that amount of improvements on the claim in each year.

- Snyder v. Colorado Gold Dredging Co., 181 Fed. 62, p. 68.

This section contemplates no interruption of the annual improvements on a mining claim until the entry and payment of purchase money.

- Clark v. American Flag Gold Min. Co., 7 C. L. O. 5.

This section requires \$10 worth of labor or improvements in each year for each 100 feet in length along the vein, until a patent issues, on all claims located prior to May 10, 1872, and a failure to perform such labor or make such improvements subjects the claim to relocation.

- Seaton Min. Co. v. Davis, Copp. Min. Lands 296, p. 297.

On a claim 2,200 feet in length by 100 feet in width, located prior to May 10, 1872, it was necessary that \$220 worth of work should be immediately performed thereon.

Stewart v. Reese, 21 L. D. 446, p. 448.

It is fraud against the Government and the law to hold quartz claims by merely doing a few dollars' worth of work thereon at or near the beginning of the year next following the year on which the claimant failed to do the necessary work, when such work is not commenced with the bona fide intention of being continued until the full amount is done.

McCormick v. Baldwin, 104 Cal. 227, p. 229.

An attempt to assert a continuous right to a mining claim can not be based upon a mere pretense of work so plainly a sham that it must be disregarded, but this principle can not be applied where the work done was actual and valuable.

Belcher Consol. Gold Min. Co. v. Defarrari, 62 Cal. 160, p. 163.

The rule that possession of mineral ground as against third parties may be maintained indefinitely by the claimant of an annual expenditure of \$100 in labor or improvements on the location, under this section, applies to lands valuable for phosphate deposits.

Phosphate Deposits, In re, 17 C. L. O. 74.

An annual expenditure of the amount of \$100 to be done on each located claim must be made upon placer as well as lode claims.

Good Return Min. Co., In re, 4 L. D. 221, p. 223.

See *Jackson v. Roby*, 109 U. S. 440.

So long as \$100 is expended each year upon a mining claim the owner's right to exclusive possession and to extract and exhaust the ore is as complete as if he held a patent, for which he may never apply unless he desires.

Nash v. McNamara, 30 Nev. 114, p. 138.

5. VALUE OF WORK OR IMPROVEMENTS—DETERMINATION.

In determining the amount of work done upon a claim, or improvements made thereon, the test is not as to the number of days' work done thereon, but as to the reasonable value of such work or improvements, and not as to the contract price or what was paid therefor, and whether or not the work and improvements were reasonably worth the sum of \$100.

Beatty, In re, 40 L. D. 486, p. 487.

See *Mattingly v. Lewisohn*, 8 Mont. 259.

Penn v. Oldhauber, 24 Mont. 287.

McCornick, In re, 40 L. D. 498.

A contest as to representation work is not as to the number of days worked upon the mining claim, but is the reasonable value of the labor performed or improvements made, and the value of either is to be measured not in days but in dollars, and regulations or customs of miners can not fix the number of days' work without reference to the value of the work or improvements.

Penn v. Oldhauber, 24 Mont. 287, p. 291.

See *Mattingly v. Lewisohn*, 13 Mont. 508.

The value of the use of a building furnished on a mining claim and the expenses of removing an old building on such claim may be properly credited to the amount paid on assessment work.

Tripp v. Dunphy, 28 L. D. 14, p. 16.

In considering the amount and value of annual labor and improvements upon a mining claim it is proper to consider all the circumstances in connection with the claim, the remoteness of the claim from any place where labor can be relied upon as available,

the extra cost of supplies, the inconvenience in procuring wood and water, the fact that a team must be kept at or near the location, the lack of facilities for cooking, and other like circumstances, and if, considering such circumstances, the work on the claim amounted to \$100, and such amount was paid in good faith for the work done, and was intended to comply with the statute, a court will not, under such circumstances, permit a claim to be forfeited on merely conflicting evidence.

Wright v. Killian, 132 Cal. 56, p. 60.
 Fredericks v. Klausner, 52 Oreg. 110, p. 117.
 Gear v. Ford, 4 Cal. App. 556, p. 561.

6. LOCAL REGULATIONS—EFFECT AND VALIDITY.

This act requires the owner of a mining claim located prior to May 10, 1872, to perform \$10 worth of labor or improvements for each 100 feet in length along the vein, and local regulations requiring performance of such work every 60 days are invalid as being in conflict with this section.

Original Co., etc., v. Winthrop Min. Co., 60 Cal. 631, p. 632.

A local custom of miners to the effect that 20 days' work upon a mining claim will satisfy the requirement as to annual work is in conflict with this section of the statute and is invalid.

Penn v. Oldhauber, 24 Mont. 287, p. 290.

7. WHO MAY PERFORM WORK AND MAKE IMPROVEMENTS.

A court has power in a proper case to appoint a receiver to perform the annual assessment work upon an unpatented mining claim in order to preserve the possessory title pending litigation.

Hickey v. Parrot Silver & Copper Co., 25 Mont. 164, p. 184.
 See Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.

Work done on a mining claim by anyone, whether holding the legal or equitable title, done in the interest of the claim, is available to preserve the claim.

Smelting Co. v. Kemp, 104 U. S. 636.
 Diamond Creek Gold, etc., Co. v. Floyd, 9 C. L. O. 54, p. 55.

Work done by any grantor of an applicant while holding the claim under either a legal or equitable title in the interests of the claim is available to preserve it, and no mere relocation for forfeiture made before the forfeiture actually attaches by actual default would be valid to defeat the claim.

Jupiter Min. Co. v. Bodie-Consol. Min. Co., 11 Fed. 666, p. 682.

The annual assessment work may be performed by a person or corporation for whose benefit or interest the legal title of a mine or mining claim is held in trust.

Wailes v. Davies, 158 Fed. 667, p. 673.
 Book v. Justice Min. Co., 58 Fed. 106.
 Godfrey v. Faust, 18 S. Dak. 567.
 Dye v. Crary, 13 N. Mex. 439.

A stockholder in a mining corporation has such a beneficial interest in the corporate property that any work done by him on an unpatented mining claim of such corporation must be counted as representation work, and that such work will inure to the benefit of the corporation as against a denial of such intention on the part of the stockholder performing the work where he seeks to gain a personal advantage by denying the intention.

Wailes v. Davies, 158 Fed. 667, p. 674.
 Affirmed: Wailes v. Davies, 164 Fed. 397, p. 399.

By a conveyance of his interest the locator ceases to do any work on the claim, and he thereby puts another in possession with all rights to do the work called for, and

gives the purchaser the right to do all that he could have done toward purchasing the land itself.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 451.

The term "legal representative" is only used in this section in reference to the performance of annual labor upon mining claims, and does not authorize an administrator of a deceased mineral claimant to maintain an action to quiet title to a mining claim.

Keller v. Trueman, 15 Colo. 143, p. 146.

A deed for an interest in a mining claim may compel the grantees to perform all the assessment work required under this section.

Shaw v. Caldwell, 16 Cal. App. 1, p. 3.

Work done by a trespasser or a stranger to the title of a mining claim will not inure to the benefit of the locator.

Nesbitt v. De Lamar's Nevada Gold Min. Co., 24 Nev. 273, p. 283.

See *Little Gunnell Min. Co. v. Kimber*, 15 Fed. Cas. 629.

8. TIME FOR PERFORMANCE OF WORK OR MAKING IMPROVEMENTS.

Upon claims located prior to May 10, 1872, the first annual expenditures were due by January 1, 1875, and annually thereafter.

Haynes, In re, 7 C. L. O. 130.

Hill, In re, Copp's Min. Lands 295.

The first annual expenditure upon a claim located since May 10, 1872, must be made within one year from the date of discovery and location, but locators must comply with local laws in making their locations.

Bruner, In re, 4 C. L. O. 66.

The proviso that the period within which the annual work on a claim shall be done does not act retrospectively, so as to save a claim from a forfeiture incurred before the enactment of the proviso.

Slavonian Min. Co. v. Perasich, 7 Fed. 331, p. 332.

Under this section the annual improvements are due within each year, commencing with the date of the location.

Haynes, In re, 7 C. L. O. 130.

Hill, In re, Copp's Min. Lands 295.

The locators of a placer mining claim located in September, 1905, have all of the remainder of the year and all of 1906 in which to do the required annual work on the claim.

Rooney v. Barnette, 200 Fed. 700, p. 708.

See *Malone v. Jackson*, 137 Fed. 878.

9. CHARACTER OF WORK OR IMPROVEMENTS GENERALLY.

Work on a mining claim is work done anywhere within the lines upon the surface, and anywhere within those lines below the surface when they are carried downward vertically.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Assessment work may be done on the surface or below the surface of a claim.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 560.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Assessment work may be done on a lode having its apex outside of the surface lines of the location.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 560.

See *Mt. Diablo etc. Min. Co. v. Callison*, 17 Fed. Cas. 918.

The character of the assessment work required to be done upon a mine to prevent forfeiture becomes material only when it is performed outside of the boundaries of the claim, and in that event the labor must tend to the development or improvement of the mining claim for which it is designed, otherwise it will not answer the statutory requirement.

Wailes v. Davies, 158 Fed. 667, p. 670.

The work and labor required by this section are not synonymous with the improvements, as the former have reference to prospecting and excavating for the purpose of development, while the latter has reference to material additions to the claim in the way of machinery, buildings, and other structures erected for the purpose of developing the property.

McCornick, In re, 40 L. D. 498, p. 502.

See Power v. Sla, 24 Mont. 243.

In determining the character and purpose of labor and improvements upon mining claims or in the development of several claims held in common, the same principle applies whether the labor was performed or the improvements made under this section for the maintenance of the possessory title, or whether done in fulfillment of the condition to obtaining patent under section 2325.

Copper Glance Lode, In re, 29 L. D. 542, p. 548.

Whether or not work was done for the purpose of improving a claim is a question of fact.

Gear v. Ford, 4 Cal App. 556, p. 562.

See Taylor v. Middleton, 67 Cal. 656.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100.

10. LABOR OR IMPROVEMENTS FOR DEVELOPING CLAIM.

A liberal construction is given to this requirement of the law, and the required labor or improvements is deemed to be done when the labor is performed or the improvements made for the purpose of working, prospecting, or developing the ground embraced in the surface location, or for the purpose of facilitating the extraction or removal of the ore therefrom.

McCulloch v. Murphy, 125 Fed. 147, p. 149.

Sexton v. Washington Min., etc., Co., 55 Wash. 380, p. 383.

See Smelting Co. v. Kemp, 104 U. S. 636, p. 655.

Book v. Justice Min. Co., 58 Fed. 106, p. 117.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

A shaft sunk upon, or tunnel driven from, one of several contiguous claims or with- out a group of claims held in common, to reach the veins or ledges of each at a depth which would render the cost of a single shaft or drift on each claim wholly excessive, or in the case of the construction of a flume and the introduction of water for the purpose of washing placer minerals from each claim may be sufficient to answer the statutory requirement, if it appear that the entire group are integrally benefited by the work done upon any one, or such work may be done wholly outside of such claims; but such labor or improvements so performed or made must be of such a character as to promote the development of each claim.

Cassel, In re, 32 L. D. 85, p. 87.

Smelting Co. v. Kemp, 104 U. S. 636, p. 655.

Jackson v. Roby, 109 U. S. 440, p. 445.

Copper Glance Lode, In re, 29 L. D. 542, p. 548.

A cut made in the rock to facilitate the extraction of ore and the building of a tram or road to carry the ore from the claim to the company's smelter are matters to be considered in determining whether the expenditure of \$500 has been made on a mining claim, where it is shown that such work was not included in any improvements upon any other claim.

Emily Lode, In re, 6 L. D. 220, p. 222.

Expenditures for drill holes upon a lode mining claim for the purpose of prospecting to secure data for the further development of the claim are not available as expenditures.

McCornick, In re, 40 L. D. 498.

See *American Onyx & Marble Co.*, In re, 42 L. D. 417, p. 419.

Work done on a placer claim to determine whether or not there are existing lodes within the placer limits is the performance of annual labor within this section.

United States v. Iron Silver Min. Co., 24 Fed. 568, p. 571.

McCornick, In re, 40 L. D. 498, p. 502.

See *Kirk v. Clark*, 17 L. D. 190.

Kielley v. Belcher, etc., Min. Co., 14 Fed. Cas. 460, p. 464.

Buckley v. Gould, etc., Min. Co., 14 Fed. 833.

United States v. King, 9 Mont. 75, p. 80.

Bishop v. Baisley, 28 Oreg. 119, p. 135.

11. SERVICES OF WATCHMAN.

A person who guards and cares for the works, machinery, and buildings of a developed mine, where mining operations are temporarily suspended, performs an important and necessary service, and the time and labor of a watchman and custodian thus expended on the property is labor done on the claim.

Tripp v. Dunphy, 28 L. D. 14, p. 15.

See *Lockhart v. Rollins*, 2 Idaho 503.

The placing of a watchman on a claim merely to warn prospectors and thereby prevent a relocation is not labor upon a mine within the meaning of the statute, though his presence shows possession, open and notorious.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 562.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 591.

See *Kinsley v. New Vulture Min. Co.*, 11 Ariz. 66, p. 71.

Hough v. Hunt, 138 Cal. 142.

New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211.

Gear v. Ford, 4 Cal. App. 556, p. 562.

Quimby v. Boyd, 8 Colo. 194.

Fredericks v. Klauser, 52 Oreg. 110, p. 118.

Merchants National Bank v. McKeown, 60 Oreg. 325, p. 330.

Whiting v. Straup, 17 Wyo. 1, p. 25.

The services of a watchman in watching the ground and buildings and other contents, and for looking after the mining claim generally, are not labor performed or improvements made on the mine within the meaning of the statute.

Gear v. Ford, 4 Cal. App. 556, p. 562.

12. TRAVELING EXPENSES.

The amount of work performed by a laborer at a mine in good working order furnishes but a poor criterion as to proof of performance of assessment work, and neither can the owner be held to the amount paid to laborers at the mine, but he is entitled to credit for traveling expenses of persons sent some considerable distance on an order of court, and for their time in going and returning, the expenses for tools, freight hauling, etc.

Whalen Consol. Copper Min. Co. v. Whalen, 127 Fed. 611, p. 612.

See *Book v. Justice Min. Co.*, 58 Fed. 106, pp. 117, 128.

McCulloch v. Murphy, 125 Fed. 147.

Walton v. Wild Goose Min. Co., 123 Fed. 209, p. 218.

Willitt v. Baker, 133 Fed. 937, p. 948.

McKay v. Neussler, 148 Fed. 86, p. 87.

Personal expenses in traveling and the value of the time of a locator of the mining claim in endeavoring to procure water to run a mill to crush rock and ore from the mine can not be said to be labor performed on the mine within the meaning of this section.

Du Prat v. James, 65 Cal. 555, 558.

Expenses incurred in traveling and locating and recording a mine can not be considered as expenditures under this section.

Crawford, In re, 9 C. L. O. 130.

See American Antimony Co., In re, 14 C. L. O. 209.

Dolores Min. Co., In re, 15 C. L. O. 51.

13. DEVELOPMENT WORK AND IMPROVEMENTS OUTSIDE OF CLAIM.

Labor and improvements, within the meaning of this section, are deemed to be had on a mining claim when such labor is performed or the improvements are made for its development in such manner as to facilitate the extraction of the metals, though such labor and improvements may not be on the particular location itself.

Smelting Co. v. Kemp, 104 U. S. 636, p. 651.

Jackson v. Roby, 109 U. S. 440, p. 444.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 560.

Anvil Hydraulic, etc., Co. v. Code, 182 Fed. 205, p. 206.

Spur Lode, In re, 4 L. D. 160.

Emily Lode, In re, 6 L. D. 220.

Floyd v. Montgomery, 26 L. D. 122, p. 132.

Copper Gance Lode, In re, 29 L. D. 542, p. 547.

Diamond Creek Gold, etc., Co. v. Lloyd, 9 C. L. O. 54, p. 55.

American Antimony Co., In re, 14 C. L. O. 209.

Remington v. Baudit, 6 Mont. 138, p. 141.

Copper Mtn. Min., etc., Co. v. Butte & Corbin Consol. Copper, etc., Co., 39 Mont. 487, p. 492.

Bishop v. Baisley, 28 Oreg. 119, p. 135.

Sherlock v. Leighton, 9 Wyo. 297, p. 301.

See Gird v. Calif. Oil Co., 60 Fed. 531, p. 542.

De Noon v. Morrison, 83 Cal. 163, p. 166.

Hall v. Kearney, 18 Colo. 505.

Strasburger v. Beecher, 20 Mont. 143.

Power v. Sla, 24 Mont. 243.

Work done outside of the limits of a mining claim for the purpose of prosecuting or working it will hold the claim under this statute the same as if done within the boundaries of the claim itself.

Jupiter Min. Co. v. Bodie, etc., Co., 11 Fed. 666, p. 682.

Walton v. Wild Goose Min., etc., Co., 23 Fed. 209, pp. 217, 218.

United States v. Iron Silver Min. Co., 24 Fed. 568.

Book v. Justice Min. Co., 58 Fed. 106, p. 117.

Willitt v. Baker, 133 Fed. 937, p. 948.

Kirk v. Clark, 17 L. D. 190, p. 194.

Bakke v. Latimer, 3 Alaska 95, p. 98.

Godfrey v. Faust, 20 S. Dak. 203, p. 207.

Hawgood v. Emery, 22 S. Dak. 573, p. 574.

See Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Emily Lode, In re, 6 L. D. 220.

McCornick, In re, 40 L. D. 498, p. 502.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100.

Big Three Min., etc., Co. v. Hamilton, 157 Cal. 130, p. 138.

Assessment work may be done on other claims or on other ground if in reasonable proximity to the claim.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 560.

United States v. Iron Silver Min. Co., 24 Fed. 568.

See Debney v. Iles, 3 Alaska 438, p. 452.

Doherty v. Morris, 17 Colo. 105.

Work done outside of a mining claim and with direct reference to the claim may be considered as work done on the claim, but the evidence of such work should be received with caution, and it should be made to appear clearly that the work was intended for the improvement of the claim.

Emily Lode, In re, 6 L. D. 220, p. 222.

See Kramer v. Settle, 1 Idaho 485.

The law does not require that the annual expenditure to protect the claim shall be applied in the way of the best possible development thereof for the reason that experienced miners might honestly differ as to this.

McCornick, In re, 40 L. D. 498, p. 502.
See Sherlock v. Leighton, 9 Wyo. 297.

14. KINDS OF WORK OR IMPROVEMENTS OUTSIDE OF CLAIM.

Work performed outside of the boundaries of a mining claim can not be considered as assessment work done on such claim, unless it is shown that the work is of value to the claim upon which it is sought to apply such work as annual labor, either generally in enhancing the money value of the same or in the way of prospecting, developing, or operating it.

Anvil Hydraulic, etc., Co. v. Code, 182 Fed. 205, p. 217.

The expenditures required by this section may be made upon roadways, tunnels, ditches, or other improvements used for or in connection with the development of the mine.

Crawford, In re, 9 C. L. O. 130.

The labor and improvements contemplated by this section may be performed at a distance from the mining claim, where such labor and improvements are made or performed for the purpose of developing the claim, as in the turning of a stream, or the introduction of water, or the construction of a flume to carry off the débris or waste material.

Smelting Co. v. Kemp, 104 U. S. 636, p. 655.
Union Oil Co., In re, 23 L. D. 222, p. 225.
De Noon v. Morrison, 83 Cal. 163, p. 165.
See Bryan v. McCaig, 10 Colo. 309, p. 315.
Hall v. Kearney, 18 Colo. 505.
Hain v. Mattes, 34 Colo. 345, p. 352.
Strasburger v. Beecher, 20 Mont. 143.
Power v. Sla, 24 Mont. 243.

The required work and improvements may be in the construction or development of a road outside of the limits of the claim.

Sexton v. Washington Min., etc., Co., 55 Wash. 380, p. 384.
See Doherty v. Morris, 17 Colo. 105.

Work done on different portions of a road or trail constructed by a locator for the development of several mining claims can not be credited to the different claims, yet such trail or road may be considered as a part of the \$500 worth of improvements required on a claim, though a small part only of the trail was within its surface boundaries.

White Cloud Copper Min. Co., In re, 22 L. D. 252, p. 253.

Work done on the construction of a road leading to a mining claim is not available where it is shown that the road was constructed for the joint benefit of different claims or groups of claims.

Alice Edith Lode, In re, 6 L. D. 711.
Copper Glance Lode, In re, 29 L. D. 542, p. 548.

But the provisions of this section are not satisfied and the law does not apply to cases where several claims are held in common, and all the expenditures made are for the development of one claim without reference to the development of others.

Cassel, In re, 32 L. D. 85, p. 88.

15. GENERAL SYSTEM OF DEVELOPMENT WORK FOR GROUP CLAIMS.

The law permits a general system to be adopted for the improvement and working of adjoining claims held in common, and in such case the expenditures required by this section may be made, or the labor be performed upon any of them.

Jackson v. Roby, 109 U. S. 440, p. 445.

A general system may be formed well adapted and intended to work several contiguous claims or lodes, and when such is the case work in furtherance of the system is work upon the claim intended to be developed by it.

Smelting Co. v. Kemp, 104 U. S. 636.

Jackson v. Roby, 109 U. S. 440.

Chambers v. Harrington, 111 U. S. 350, p. 354.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

McNeil v. Pace, 3 L. D. 267, p. 270.

Diamond Creek Gold, etc., Min. Co. v. Lloyd, 9 C. L. O. 54, p. 55.

Hain v. Mattes, 34 Colo. 345, p. 350.

See Union Oil Co., In re, 23 L. D. 222, p. 225.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 682.

Book v. Justice Min. Co., 58 Fed. 106, p. 117.

Gird v. California Oil Co., 60 Fed. 531, p. 541.

Royston v. Miller, 76 Fed. 50.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 560.

Clark's Pocket Quartz Mine, In re, 27 L. D. 351.

Copper Glance Lode, In re, 29 L. D. 542, p. 546.

Black Lead Lode Extension, In re, 32 L. D. 595, p. 596.

Zephyr, etc., Lode Min. Claims, In re, 30 L. D. 510, p. 514.

Where the same person or company owns several contiguous mining claims capable of being advantageously worked together and one general system has been adopted for the purpose of their development, the value of the work done and improvements made annually for their development pursuant to such system, whether done on one claim or outside of all of them, is available toward meeting the requirements as to the annual expenditure for the several claims.

Smelting Co. v. Kemp, 104 U. S. 636, p. 653.

Jackson v. Roby, 109 U. S. 440, 444.

Chambers v. Harrington, 111 U. S. 350, p. 353.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918, p. 925.

Work done outside of a claim, if done for the purpose and as a means of prospecting or developing the claim, is as available for holding the claim as if done within its boundaries; and a general system may be formed which is adapted and intended to work several contiguous claims, and in such case work in furtherance of the system is work on the claims intended to be developed thereby.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Gird v. California Oil Co., 60 Fed. 531, p. 542.

McNeil v. Pace, 3 L. D. 267, p. 270.

Emily Lode, In re, 6 L. D. 220.

Copper Glance Lode, In re, 29 L. D. 542, p. 547.

16. DEVELOPMENT WORK AND IMPROVEMENTS FOR GROUP CLAIMS.

Where several claims are held in common the statute allows the necessary work to be done on one of them, or upon adjacent patented lands, or upon public lands, but the expenditure of money or labor must equal in value that which would be required on all the claims if they were separate and independent; and in such case the claims must be contiguous, so that each claim thus associated may in some way be benefited by the work done.

Chambers v. Harrington, 111 U. S. 350, p. 353.

Jackson v. Roby, 109 U. S. 440, p. 444.

Smelting Co. v. Kemp, 104 U. S. 336, p. 655.

Mt. Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

- Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.
 Book v. Justice Min. Co., 58 Fed. 106.
 Gird v. California Oil. Co., 60 Fed. 531, p. 541.
 Royston v. Miller, 76 Fed. 50, p. 52.
 Anvil Hydraulic, etc., Co. v. Code, 182 Fed. 205, p. 206.
 Copper Glance Lode, In re, 29 L. D. 542, p. 547.
 American Antimony Co., In re, 14 C. L. O. 209, p. 210.
 McNeil v. Pace, In re, 11 C. L. O. 307, p. 309.
 Yreka Min., etc., Co. v. Knight, 133 Cal. 544.
 Taylor v. Parenteau, 23 Colo. 368, p. 372.
 Little Dorrit Gold Min. Co. v. Arapahoe Gold Co., 30 Colo. 431.
 Hain v. Mattes, 34 Colo. 345, p. 352.
 Duncan v. Eagle Rock, etc., Min., etc., Co., 48 Colo. 569, p. 585.
 Strasburger v. Beecher, 20 Mont. 143, p. 151.
 Power v. Sla, 24 Mont. 243.
 Eberle v. Carmichael, 8 N. Mex. 169, p. 174.
 Upton v. Santa Rita Min. Co., 14 N. Mex. 96.
 Fredericks v. Klausner, 52 Oreg. 110, p. 116.
 Fissure Min. Co. v. Old Susan Min. Co., 22 Utah 438.
 See North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 539.
 Lakin v. Sierra Buttes Gold Min. Co., 25 Fed. 337, p. 343.
 Diamond Creek Gold, etc., Co. v. Llyod, 9 C. L. O. 54, p. 55.
 Becharts v. Sizer, 12 C. L. O. 166.
 Belcher Consol. Gold Min. Co. v. Defarrari, 62 Cal. 160, p. 163.
 Gregory v. Pershbaker, 73 Cal. 109, p. 119.
 Pharis v. Muldoon, 75 Cal. 284.
 Sweet v. Webber, 7 Colo. 443, p. 447.
 Hall v. Kearney, 18 Colo. 505.

Labor and improvements within the meaning of this section are deemed to be on a mining claim, whether it consists of one or several locations owned by the same party and contiguous to each other, when such labor is performed or improvements made for the purpose of working and developing the ground embraced in such location or locations.

Book v. Justice Min. Co., 58 Fed. 106, p. 117.

Work done for the express purpose of prospecting two or more claims held in common may be credited to such claims within the meaning of this statute.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 560.

Bishop v. Baisley, 28 Oreg. 119, pp. 135, 136.

The statutory expenditure may be made upon any one claim, if made in good faith for the benefit of all.

Cassel, In re, 32 L. D. 85, p. 87.

Wood Placer Min. Co., In re, 32 L. D. 401.

Big Three Min., etc., Co. v. Hamilton, 157 Cal. 130, p. 135.

Improvements made upon one or more of several contiguous claims held in common may be accepted in satisfaction of the statutory requirement only where the purpose is to facilitate the extraction of mineral from the claims and the improvements are of such a character as to redound to the benefit of all the claims in this respect.

Lawson Butte Consol. Copper Mine, In re, 34 L. D. 655, p. 657.

Cassel, In re, 32 L. D. 85, p. 87.

Contiguous locations held in common are treated as entireties, and an expenditure of an amount equal to \$100 for each may be made upon one or more of such locations, provided such expenditure tends to the development of the property as a whole.

Axiom Min. Co. v. White, 10 S. Dak. 198, p. 200.

Annual assessment work done upon one claim may be for the benefit of several claims embraced within one application, and such assessment work may be done underground.

Nichols v. Becker, 11 L. D. 8, p. 17.

See Good Return Min. Co., In re, 4 L. D. 221.

Mackie, In re, 5 L. D. 199.

Godfrey v. Faust, 20 S. Dak. 203, p. 207.

Hawgood v. Emery, 22 S. Dak. 573, p. 574.

Labor and improvements are deemed to have been had on a mining claim whether it consists of one or more locations, when the labor is performed or the improvement made to facilitate the extraction of metal, though such improvements may be on ground which originally constituted only one location.

Andromeda Lode, In re, 13 L. D. 146, p. 147.

See *Nichols v. Becker*, 11 L. D. 8.

Godfrey v. Faust, 20 S. Dak. 203, p. 207.

Hawgood v. Emery, 22 S. Dak. 573, p. 574.

If a person owns two or more adjoining claims the annual work required by this section may be done on any one of them if the work is designed for the improvement or development of all; but the burden of proof is on the owner to show that the work done or improvements made does, as a matter of fact, tend to the development of the property as a whole, and that the work is a part of the general scheme of improvement.

Dolles v. Hamberg Consol. Mines Co., 23 L. D. 267, p. 269.

While work done outside of a claim or outside of contiguous claims may be credited to all the claims, if done for the benefit of all, yet it is necessary that the work shall at least be advantageous to all parts of the group.

Morgan v. Myers, 159 Cal. 187, p. 189.

17. VALUE OF WORK OR IMPROVEMENTS ON ONE OF GROUP CLAIMS.

The expenditure of money or labor on one claim held in common must equal in value that which would be required on all claims if they were separate and independent.

Chambers v. Harrington, 111 U. S. 350, p. 353.

Good Return Min. Co., In re, 4 L. D. 221, p. 224.

Mackie, In re, 5 L. D. 199, p. 202.

Golden and Cord Mining Claims, In re, 31 L. D. 178, p. 181.

Duncan v. Eagle Rock, etc., Min., etc., Co., 48 Colo. 569, p. 585.

See *Mt. Diablo, etc., Min. Co. v. Callison*, 17 Fed. Cas. 918.

Morgan v. Myers, 159 Cal. 187, p. 190.

The statute does not require the annual assessment work on each 20-acre lot of an association placer claim.

Rooney v. Barnette, 200 Fed. 700, p. 780.

See *Union Oil Co.*, In re, 25 L. D. 351.

Ferrell v. Hoge, 27 L. D. 129.

Miller v. Chriaman, 140 Cal. 440, p. 450.

Whiting v. Straup, 17 Wyo. 1.

18. CLAIMS HELD IN COMMON—CONTIGUOUS CLAIMS.

The phrase "held in common" in this section means a claim whereof there are more owners of a claim than one, while the use of the words "claims held in common," on which work done on one of such claims shall be sufficient, means that there must be more than one claim so held, in order to make a case where work on one of them shall answer the statutory requirement as to all.

Chambers v. Harrington, 111 U. S. 350, p. 352.

Mining claims are not contiguous within the rule that assessment work may be done upon one claim for several contiguous claims where such claims touch each other at the corners only.

Anvil Hydraulic, etc., Co. v. Code, 182 Fed. 205, p. 206.

See *Hidden Treasure Consol. Quartz Mines*, In re, 35 L. D. 485.

Under this section work done and improvements made in the general development of an oil district including many distinct claims owned by one person can only inure to the benefit of contiguous claims, though it may be the most practical method of working and ultimately reaching the oil in all claims.

Gird v. California Oil Co., 60 Fed. 531, p. 542.

19. INSUFFICIENT DEVELOPMENT WORK OR IMPROVEMENTS.

The construction of a flume used merely to remove the débris of one claim is not a performance of labor or improvements within the meaning of this section.

Jackson v. Roby, 109 U. S. 440, p. 442.

Chambers v. Harrington, 111 U. S. 350, p. 354.

Hain v. Mattes, 34 Colo. 345, p. 351.

A drain 2 miles away from a placer claim and without an intention to extend it can not in any way tend to enhance the money value of the same, and can be of no use whatever in prospecting, developing, or operating it; but if such a drain is begun under a definite plan for its extension through a series of claims it might then, when completed, be of benefit and value to each, and in such case work done at a distance from any one of the claims may be reckoned as assessment work thereon, as it would tend to its benefit or improvement.

Anvil Hydraulic, etc., Co. v. Code, 182 Fed. 205, p. 207.

The costs of the preliminary survey of a ditch for the development of a mining claim will not be credited as a part of the required statutory expenditure where the ditch has not been dug, and where the mineral surveyor certifies under oath that the interest of the mining claim in the proposed ditch is one-half.

Stork v. Heron Placer, 7 L. D. 359, p. 360.

The building of a dwelling house within the boundaries of a mining claim is not a sufficient compliance with this section, and is not sufficient for the purposes of representation and patent, though necessary for the proper housing of the locator and miners employed by him.

Remmington v. Baudit, 6 Mont. 138, p. 140.

The mere prospecting of a mining claim can not be credited as assessment work unless the term is applied to work or improvement in the sense of development and demonstration, and the mere picking rock from the walls of a shaft or from an outcropping ledge in small quantities from day to day, and making tests for the purpose of sampling or crushing it in a mortar and panning it out for assays, is not labor which adds to the value of the claim nor tends to develop the mine, and is not work that can be credited as assessment work or improvements within the meaning of the statute.

Bishop v. Baisley, 28 Oreg. 119, p. 136.

See Duprat v. James, 65 Cal. 555.

Honaker v. Martin, 11 Mont. 91.

20. TUNNEL CONSTRUCTION WORK.

Where the running of a tunnel is a practical way to work and prospect a mining claim the assessment work required by the statute may be done in the construction of a tunnel.

Book v. Justice Min. Co., 58 Fed. 106, p. 117.

Under this section in its present form, where a locator runs a tunnel for the purpose of developing his vein or lode, the money so expended in such tunnel is taken and considered as expended on the vein or lode.

Book v. Justice Min. Co., 58 Fed. 106, p. 117.

Coleman, In re, 1 C. L. O. 34.

A tunnel run for the purpose of working a mine, and by means of which the mine is successfully worked, is sufficient for holding the claim, though the tunnel is outside the boundaries of the claim.

Kirk v. Clark, 17 L. D. 190, p. 194.

See McCornick, In re, 40 L. D. 498, p. 502.

Work done on a tunnel as an improvement upon the mining claim must be done for the express purpose of benefiting the claim and for its development.

Duncan v. Eagle Rock, etc., Min., etc., Co., 48 Colo. 569, p. 583.

See *Bryan v. McCaig*, 10 Colo. 309.

Work done in a tunnel and shafts may be beneficial and sufficient for development purposes of consolidated claims.

Fissure Min. Co. v. Old Susan Min. Co., 22 Utah 438, p. 444.

Expenditures made in the repair of an existing tunnel, without any extension, can not be credited to other contiguous claims located by the common owner subsequent to the completion of the tunnel.

Austin Manhattan Consol. Min. Co., In re, 42 L. D. 75, p. 77.

The locators of lode claims affected by the Sutro tunnel are exempt from performance of the annual labor, but they must comply with all local laws.

Sutro Tunnel Co., In re, 8 C. L. O. 54, p. 55.

21. NO WORK REQUIRED AFTER APPLICATION AND ENTRY.

An applicant for a patent to a mining claim who has made final entry, paid the purchase price, and has obtained his certificate of purchase, is not required to continue the annual assessment work under this section, pending the decision upon his application and the issuance of the patent, as such entry and certificate are equivalent to a patent.

Aurora Hill, etc., Min. Co. v. Eighty-five Min. Co., 34 Fed. 515, p. 518.

Benson Min. Co. v. Alta Min., etc., Co., 145 U. S. 428, p. 429.

Harrison, In re, 2 L. D. 767, p. 771.

Morgan v. Antlers-Park-Regent Consol. Min. Co., 29 L. D. 114.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 205.

Alta Min., etc., Co. v. Benson Min., etc., Co., 2 Ariz. 362.

Batterton v. Douglas Min. Co., 20 Idaho 760, p. 764.

See *South End Min. Co. v. Tinney*, 22 Nev. 19, p. 68.

The annual assessment work upon a mine is not required to be made after the entry in the Land Office on the theory that the Government parts with the property upon such entry, though the title remains in it until the patent is in fact issued, as the right to the patent arises immediately upon payment of the price and a mere delay in the administration of affairs will not defeat or diminish the right of the purchaser.

Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428, p. 431.

Neilson v. Champagne Min., etc., Co., 111 Fed. 655, p. 657.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 353.

The annual expenditure required by this section relates only to expenditures before a patent is issued, proof of which is a matter for consideration at the time application is made for a patent, and this requirement is not affected, or the proof required at the time of making application for a patent changed, whether the application is for a patent for one claim or for several claims held in common.

Smelting Co. v. Kemp, 104 U. S. 636, p. 655.

Union Oil Co., In re, 23 L. D. 222, p. 225.

Where an adverse claim has been filed to an application for a patent to a mining claim and proceedings timely instituted in the proper court, the applicant is not obliged thereafter to keep up the annual expenditure required by this section in order to prevent the relocation and probable loss of his claim during the pendency of such proceedings.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 211.

The necessity of annual expenditures continues under this section, not for a particular term of years, nor for a period equal to that prescribed by the statute of limitations of the State in which a mine is situated, but until the coowner of the possession shall become the owner of the property.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.

The duty to perform the annual assessment work continues until payment of the purchase price is made to the Government, and neither the pendency of the proceedings for patent before the Land Office nor an action on an adverse claim will relieve the mineral claimant from the necessity of performing the annual representation work.

Poore v. Kaufman, 44 Mont. 248, p. 253.
South End Min. Co. v. Tinney, 22 Nev. 19.

The terms of this section relating to annual expenditures refer solely to the possessory title, which has legally been merged into the right of property on full compliance and payment of the purchase price, and annual expenditures are no longer required to be made.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.
See Smith v. Van Clief, 6 C. L. O. 2.

Where the price of a mining claim has been paid, the equitable rights of the purchaser are complete, and there is no obligation on his part to do further annual work, and any delay in issuing a patent is a mere matter occurring in the administration of the Land Department, and the patent when issued takes effect as of the date of the purchase.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 204.
See Benson Mining, etc., Co. v. Alta Min., etc., Co., 145 U. S. 428.

But the filing of an application for a patent for a mining claim does not suspend the obligation to keep up the required work, where the claimant permits it to sleep for years, and where he has not paid the purchase money, and in such case the claim is open to relocation.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 208.
See Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.
Gillis v. Downey, 85 Fed. 483.

After the cancellation of an entry, the right of possession of a mining claim depends wholly upon compliance with the law requiring the performance of assessment work, and if the owner of a claim fails to perform such assessment work for any calendar year, the claim becomes subject to relocation, unless work is resumed before any relocation; and if a new application for entry and patent is made, notice of the application must be given in the same manner and for the same time as notice for the original application, subject to the same rights of adverse claimants.

Gaffney v. Turner, 29 L. D. 470, p. 473.

When a grantee does the assessment work and obtains the patent it can not be burdened with any right of dower in the widow of the grantor.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 451.

22. FAILURE TO PERFORM WORK—EFFECT.

Neither the failure of a locator or owner to occupy or to work his claim during a given year will operate to divest him of the title and confer it on another.

Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 296.

A failure to perform the annual assessment work after application for patent and the payment of the full price does not subject the claim to relocation, as a delay in issuing the patent can not affect the rights of the applicant.

Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428, p. 430.
American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.

Where the required annual work was done for a certain year the right to the mining claim revived, though chargeable with a previous default.

Crown Point Min. Co. v. Crismon, 39 Oreg. 364, p. 368.
See Justice Min. Co. v. Barclay, 82 Fed. 554.

A mining claim is a contingent estate and is kept alive by the performance of the statutory worth of work each year, and if this work is not performed the claim is forfeited and the land becomes a part of the public domain.

- Black v. Elkhorn Min. Co.*, 49 Fed. 549, p. 553.
Quigley v. Gillett, 101 Cal. 462, p. 467.
Poore v. Kaufman, 44 Mont. 248, p. 254.
 See *Phosphate Deposits, In re*, 17 C. L. O. 74, p. 75.

If the required work is not performed, after the expiration of a year, and notice of contribution properly given, the rights of delinquents are absolutely cut off, though the failure to do such work may have been caused by the death of the locator during the year.

- Elder v. Horseshoe Min., etc., Co.*, 194 U. S. 248, p. 256.
Badger Gold Min., etc., Co. v. Stockton Gold, etc., Min. Co., 139 Fed. 838, p. 842.

On failure of an owner of a mining claim to perform the annual assessment work, the claim is subject to relocation, and a valid relocation may be made thereon.

- Belk v. Meagher*, 104 U. S. 279, p. 282.
Lockhart v. Johnson, 181 U. S. 516, p. 527.
Faxon v. Barnard, 4 Fed. 702.

In contemplation of law a mining claim is restored to the public domain as soon as abandonment takes place; and a claim is never subject to forfeiture until the expiration of the time within which the annual labor may be done.

- Street v. Delta Min. Co.*, 42 Mont. 371, p. 386.
 See *McKay v. McDougall*, 25 Mont., 258.

23. RESUMPTION OF WORK—MEANING AND EFFECT.

By this section the annual assessment work is required to be done during the year, but a failure to complete such work within the year, while rendering the ground open to relocation, does not work a forfeiture of the locator's rights, but he, or his heirs, assigns, or legal representatives, may resume work upon the claim after such failure to complete, if no other location has been made in the meantime.

- Thatcher v. Brown*, 190 Fed. 708, p. 710.
Little Gunnel Co. v. Kimber, 15 Fed. Cas. 629, p. 630.
North Noonday Min. Co. v. Orient, etc., Min. Co., 1 Fed. 522, p. 536.
Slavonian Min. Co. v. Perasich, 7 Fed. 331, p. 332.
Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 681.
Coleman v. McKenzie, 29 L. D. 359, p. 361.
Barklage v. Russell, 29 L. D. 401.
Navajo Indian Reservation, In re, 30 L. D. 515, p. 516.
France, Pontez & Co. v. Harrison (Harrington), 5 C. L. O. 66.
American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.
Anderson v. Anvil Hydraulic Co., 3 Alaska 496, p. 505.
Jordan v. Duke, 6 Ariz. 55, p. 70.
Belcher v. Consolidated Min. Co. v. Defarrari, 62 Cal. 163.
Du Prat v. James, 65 Cal. 555, p. 557.
Russell v. Brosseau, 65 Cal. 605, p. 608.
Pharis v. Muldoon, 75 Cal. 284, p. 287.
Emerson v. McWhirter, 133 Cal. 510, p. 515.
Emerson v. Yosemite Gold Min., etc., Co., 149 Cal. 50, p. 53.
Holmes v. Salamanca Gold Min., etc., Co., 5 Cal. App. 659, p. 664.
Honaker v. Martin, 11 Mont. 91, p. 94.
Hirschler v. McKendricks, 16 Mont. 211, p. 213.
Thornton v. Kaufman, 35 Mont. 181.
Thornton v. Kaufman, 40 Mont. 282, p. 285.
 See *Gonu v. Russell*, 3 Mont. 358.
Bishop v. Baisley, 28 Oreg. 119.

“To resume work,” within the meaning of this section, is to actually begin anew with a bona fide intention of prosecuting it as required by this section.

McCormick v. Baldwin, 104 Cal. 227, p. 229.

See Worthen v. Sidway, 72 Ark. 215, p. 226.

It is not resuming work, within the meaning of this section, where a locator of a mining claim, having failed to perform the necessary representation work within the required time, did, after the expiration of the time, resume work and before the completion of the required amount ceased work, merely posting a notice soliciting proposals for the work required on the mining claim.

Hirschler v. McKendricks, 16 Mont. 211, pp. 212, 215.

The question as to whether there was a resumption of work after failure to do the annual work required for a particular year is a question of fact to be determined upon the trial of a case, and can not be determined as a matter of law.

Peachy v. Frisco Gold Mines Co., 204 Fed. 659, p. 669.

The resumption of work by a locator who has failed to perform the annual labor must be in good faith, and a failure to resume such work by reason of a mere threat of violence, made far distant from the claim, will not prevent a forfeiture.

Slavonian Min. Co. v. Perasich, 7 Fed. 331, p. 333.

The right of an original locator to perform the labor required after a failure, and have the benefit of his location, is dependent upon his having performed the labor before a relocation is made.

Du Prat v. James, 65 Cal. 555, p. 557.

24. PROOF OF PERFORMANCE OF WORK.

This section requires that proof be shown that some work was done on, or for the benefit of, each discovery or claim to hold it, and to protect the same from relocation, and to sustain the right of possession in the applicant.

Chambers v. Harrington, 111 U. S. 350, p. 353.

Good Return Min. Co., In re, 4 L. D. 221, p. 223.

The proof must show the required amount of work actually performed within the prescribed time, to entitle the locator of a mining claim to his possessory right, otherwise the claim is open to relocation.

McNeil v. Pace, 11 C. L. O. 307.

The method of proving the doing of the required assessment work is not uniform, but the mere proof of the expenditure of \$100 is not sufficient, but only furnishes an element tending to establish the good faith of the locator, and it is not the question of what or how much was paid for such labor or improvements, but whether or not the labor and improvements were reasonably worth the sum of \$100.

McCulloch v. Murphy, 125 Fed. 147, p. 149.

See Mattingly v. Lewisohn, 13 Mont. 508, p. 520.

Penn v. Oldhauber, 24 Mont. 287.

Quimby v. Boyd, 8 Colo. 194, p. 208.

Wright v. Killian, 132 Cal. 56.

Willitt v. Baker, 133 Fed. 937, p. 948.

Bakke v. Latimer, 3 Alaska 95, p. 98.

Where the assessment work is not done within the boundaries of a mining claim, the burden is on the claimant not only to show the work done outside the boundaries was intended as the assessment work on his claim, but also that it was of such character that it would inure to the benefit of his claim.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 561.

Sherlock v. Leighton, 9 Wyo. 297, p. 303.

See Copper Glance Lode, In re, 29 L. D. 542, p. 543.

Dawson, In re, 40 L. D. 17, p. 19.

Hall v. Kearney, 18 Colo. 505.

When an interested person proves that no work had been done upon a mining claim for a particular year the burden then shifts, and the claimant must establish the fact that work was done outside of the claim and for its benefit.

Merchants National Bank v. McKeown, 60 Oreg. 325, p. 329.

See *Dyer v. Brogan*, 70 Cal. 136.

Sherlock v. Leighton, 9 Wyo. 297.

It is competent to prove the entire amount of work done on a mining claim in order to show compliance with the statute and good faith in working the property.

Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 318.

The revised statutes of Utah (section 1500) require the owner of a mining claim to file an affidavit showing the performance of the required labor or improvements, but the mere failure to file such affidavit can not render the claim subject to relocation.

Murray Hill Min., etc., Co. v. Havenor, 24 Utah 73, p. 82.

Where a proof of labor was offered and objected to because the affidavit did not state the amount or character of the actual cost of the work done, nor the names of the persons who actually performed the same, nor the time when it was done, the court held that the proof of labor was properly rejected.

McKnight v. El Paso Brick Co., 16 N. Mex. 721, p. 739.

See *Upton v. Santa Rita Min. Co.*, 14 N. Mex. 96.

The burden of showing nonrepresentation is upon the party alleging it.

Strasburger v. Beecher, 20 Mont. 143, p. 151.

See *Coleman v. Curtis*, 12 Mont. 301.

25. PERFORMANCE OF WORK—JURISDICTION TO DETERMINE.

In a contest between a mineral claimant and an agricultural entryman, the question of the performance of the annual assessment work is not material, as this is a matter that arises in contest between the Government and the mineral claimant.

Aspen Consol. Min. Co. v. Williams, 23 L. D. 34, p. 48.

Goldstein v. Juneau Townsite, 23 L. D. 417, p. 420.

A failure to do the required annual assessment work under this section can not be taken advantage of by a homestead or other claimant under the agricultural laws, but can be asserted only by a mineral claimant, who, after the failure and before the resumption of work by the first locator, relocates the land according to the mining laws.

Coleman v. McKenzie, 29 L. D. 359, p. 361.

The annual expenditure in labor or improvements required by this section is solely a matter between rival or adverse claimants and goes only to the right of possession, and the determination of this question is committed to the courts in a proper proceeding and will not be decided by the Land Department.

Wolenberg, In re, 29 L. D. 302, p. 304.

Beik v. Nickerson, 29 L. D. 662, p. 665.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 208.

The determination of the question of the annual expenditure and the right of possession as between rival claimants is committed by the mining laws to the courts.

Cain v. Addenda Min. Co., 29 L. D. 62, p. 66.

Wolenberg, In re, 29 L. D. 302.

Barklage v. Russell, 29 L. D. 401, p. 402.

The Land Department has nothing to do with settling questions as to the performance of annual expenditure upon mining claims, nor of the alleged relocation thereof because of the failure to perform the annual assessment.

Cain v. Addenda Min. Co., 29 L. D. 62.

Wolenberg, In re, 29 L. D. 302.

Barklage v. Russell, 29 L. D. 401.

Wolenberg, In re, 29 L. D. 438, p. 489.

Gaffney v. Turner, 29 L. D. 470, p. 474.

Poore v. Kaufman, 44 Mont. 248, p. 257.

J. FORFEITURE OF CLAIM.

1. CONSTRUCTION OF SECTION.
2. WHAT CONSTITUTES FORFEITURE.
3. FORFEITURE BY FAILURE TO WORK.
4. FORFEITURE BY ABANDONMENT.
5. FORFEITURE AND RELOCATION.
6. PROOF TO ESTABLISH FORFEITURE.

1. CONSTRUCTION OF SECTION.

A plea of forfeiture is an admission of a prior valid location.

Bakke v. Latimer, 3 Alaska 95, p. 99.

See *Power v. Sla*, 24 Mont. 243.

The word "forfeiture" does not occur in this section, but the word is sufficiently comprehensive to express results which flow from a failure to comply with the law.

McCulloch v. Murphy, 125 Fed. 147, p. 150.

A forfeiture of a mining claim under this section is not to be favored by basing it upon language which does not plainly and unmistakably provide for it, and a resumption of work is sufficient under this section to prevent forfeiture.

Belcher Consol. Gold Min. Co. v. Defarrari, 62 Cal. 160, p. 163.

See *Temescal Oil Min. & Dev. Co. v. Salcido*, 137 Cal. 211, p. 214.

Where a valid location of a mining claim has been made and work done thereon in good faith, possession maintained, and nothing appears from which an intention to abandon may be inferred, the courts should construe the law liberally in order to prevent forfeiture.

Emerson v. McWhirter, 133 Cal. 510, p. 515.

See *Emerson v. Yosemite Gold Min., etc., Co.*, 149 Cal. 50, p. 53.

This is a statute of forfeitures, but in order that the forfeiture may be worked the facts constituting it or laying the foundation therefor must exist and the statute must be strictly construed.

Brundy v. Mayfield, 15 Mont. 201, p. 206.

This section is so far qualified by section 2326 as to prevent mineral lands which have become the subject of conflicting locations from becoming unqualifiedly a part of the unoccupied mineral lands by the mere forfeiture of one of such locations.

Lavagnino v. Uhlig, 198 U. S. 443, p. 456.

A claim is not subject to relocation until it has been forfeited under this section.

Sweeney v. Wilson, 10 L. D. 157, p. 158.

The law established a condition upon which the possessory title to a mining claim shall be supported, and on failure of which the possession shall be liable to be defeated, and permits a sacrifice of interest and investment with reluctance, and only enforces a forfeiture when, after failure is complete, another duly qualified person initiates a legal claim during the period of actual abandonment.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.

The forfeiture provisions of this section are strictly construed, and to the effect that where a coowner bringing the proceedings was not a coowner at the time the expenditures for which contribution was demanded were made, the proceedings must fail.

Turner v. Sawyer, 150 U. S. 578, p. 585.

Squires, In re, 40 L. D. 542, p. 544.

Brundy v. Mayfield, 15 Mont. 201, p. 206.
 Delmoe v. Long, 35 Mont. 139, p. 154.
 See Golden and Cord Min. Claims, In re, 31 L. D. 178, p. 179.

2. WHAT CONSTITUTES FORFEITURE.

A forfeiture takes place by operation of law without regard to the intention of the locator whenever he neglects to preserve his right by complying with the conditions imposed by law, and is made effectual by one who enters upon the ground after the expiration of the time within which the annual labor may be done, and completes a location before resumption of work by the original locator.

Street v. Delta Min. Co., 42 Mont. 371, p. 386.
 See McKay v. McDougall, 25 Mont. 258.

A forfeiture of a mining claim consists in the consequence attached by law to certain facts and the intention of the claimant as to whether or not a forfeiture in fact exists is wholly immaterial, and in this respect a forfeiture differs from abandonment.

Navajo Indian Reservation, In re, 30 L. D. 515.
 See Mallett v. Uncle Sam Gold, etc., Min. Co., 1 Nev. 188.

A mining claim would not be forfeited by failure to record the location thereof, unless the rules and regulations provide that such failure to record shall work a forfeiture of the claim.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 680.
 Bell v. Bed Rock Co., 36 Cal. 219.
 McGarrity v. Byington, 12 Cal. 426, p. 431.

This section does not make a failure to record an affidavit setting forth the amount of money expended, or value of labor performed or improvements made, a forfeiture of the claim, and the section is not susceptible of such a construction.

Book v. Justice Min. Co., 58 Fed. 106, p. 118.

The right or title of a locator to a vein discovered by him on land open to exploration is not lost or forfeited because he unwittingly places one or more of his stakes on land already claimed.

Perego v. Erwin, 85 Fed. 904, p. 907.

3. FORFEITURE BY FAILURE TO WORK.

This conditional right of the locator may be forfeited by the failure to do the necessary amount of work, or if he is one of several locators by neglecting to pay his share for the work which has been done by his coowner.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.
 Perego v. Erwin, 85 Fed. 904, p. 905.
 Branagan v. Dulaney, 2 L. D. 744, p. 748.

The forfeiture declared by the statute for failure to perform the annual assessment work is absolute, and the original locator can not question the validity of a relocation in a proceeding to determine whether the original locator had complied with the law as to the annual statutory expenditure.

Little Pauline v. Leadville Lode, 7 L. D. 506, p. 509.

A locator of a mining claim forfeits his claim if he does not each year perform work or make improvements of the value of \$10 for each 100 feet of the vein, if his location was made prior to May 10, 1872.

Original Co., etc., v. Winthrop Min. Co., 60 Cal. 631, p. 632.

The mere failure to comply with the statutory requirement does not terminate a locator's right, but the effect of such failure is to throw the land open to location by

others, and in the absence of any subsequent location the locator has the right to resume work and hold his claim.

Madison v. Octave Oil Co., 154 Cal. 768, p. 773.
See McCormick v. Baldwin, 104 Cal. 227.
Emerson v. McWhirter, 133 Cal. 510.

There can be no forfeiture of a claim for failure to perform the assessment work until the claim is relocated by another, and until such time the original locator can reenter and resume work at any time before other rights attach in favor of any subsequent locator.

Lakin v. Sierra Buttes Gold Min. Co., 25 Fed. 337, p. 343.
North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.
Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.

As between a locator and the Government the failure to do the annual assessment work does not result in a forfeiture, but it is only necessary to perform the annual labor in order to protect rights of a locator against third persons.

Beals v. Cone, 27 Colo. 473, p. 500.

A person in the possession of a mining claim and performing the annual assessment work and who quit work and left the claim on Saturday evening, December 31, with the intention of returning and continuing the work on Monday morning, January 2, as evidenced by his leaving his tools and appliances upon the claim, does not forfeit the same, and such claim can not be entered and relocated by another person after midnight on Saturday night and before time for commencing work on Monday morning.

McNeil v. Pace, 3 L. D. 267, p. 269.

A failure to perform the labor or make the improvements required by this section between date of entry and delivery of patent does not work a forfeiture of all the rights acquired by entry and demand cancellation of the same, when such failure is brought to the attention of the Land Office by relocators or otherwise.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.

The officers, directors, and stockholders of a mining corporation against which a judgment has been recovered can not, by refusing or neglecting to have the annual assessment work performed, suffer a forfeiture of the mining claim and relocate the same in the individual name or names of one or more of such officers or stockholders for the purpose of preventing the judgment plaintiff from collecting his judgment by levy and sale of the mine, and especially where certain stockholders had on their own behalf performed such assessment work in order to prevent a forfeiture.

Wailes v. Davies, 158 Fed. 667, p. 677.
Affirmed: Wailes v. Davies, 164 Fed. 397.

A mineral claimant failing to act promptly will lose all right to disputed ground upon the perfecting of a location thereon by another party.

Belk v. Meagher, 104 U. S. 279, p. 285.
Moorehead v. Erie Min., etc., Co., 43 Colo. 408, p. 416.
See Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 295.

4. FORFEITURE BY ABANDONMENT.

The interest of a locator in a claim may be forfeited by abandonment with an intention to renounce his right of possession, and any act which would work an abandonment of any other easement is sufficient to terminate all the right of possession which the locator may have in a mining claim.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.
Farrell v. Lockhart, 210 U. S. 142, p. 147.

The forfeiture of a mining claim is different from abandonment, and it can occur only at the termination of the prescribed period, and is created by statute.

Inez Min. Co. v. Kinney, 39 Fed. 832, p. 835.

Where an interest in a mining claim had been forfeited under this section relief will be denied to a person claiming an interest after an inexcusable delay of 12 years.

Kavanaugh v. Flavin, 35 Mont. 133, p. 137; 88 Pac. 764.

5. FORFEITURE AND RELOCATION.

Where a forfeiture and relocation are claimed, the question is as to whether the former locator performed the requisite labor.

Belk v. Meagher, 104 U. S. 279, p. 283.

Jackson v. Prior Hill Min. Co., 19 S. Dak. 453, p. 458.

See *Providence Gold Min. Co. v. Burke*, 6 Ariz. 323.

Wills v. Blaine, 5 N. Mex. 238.

A failure to perform the annual assessment work upon a mining claim does not ipso facto work a forfeiture of the claim but only subjects it to relocation, unless the work is resumed.

Nielson v. Champagne Min., etc., Co., 29 L. D. 491, p. 493.

Bingham Amalgamated Copper Co. v. Ute Copper Co., 181 Fed. 748, p. 750.

Where there is a conflict in area between a senior and a junior location, and the senior location is afterwards forfeited, such disputed area does not become unqualifiedly a part of the public domain, but the right of the junior locator becomes operative upon the area in conflict upon such forfeiture of the senior locator, and the rights of such junior locator become superior as against a relocater of such original senior location.

Lavagnino v. Uhlig, 198 U. S. 443, p. 453.

Swanson v. Kettler, 17 Idaho 321, p. 331.

Helena Gold & Iron Co. v. Baggaley, 34 Mont. 464, p. 475.

Street v. Delta Min. Co., 42 Mont. 371, p. 381.

See *Farrell v. Lockhart*, 210 U. S. 142.

Sanders v. Noble, 22 Mont. 110.

Bramlett v. Flick, 23 Mont. 95.

An original locator after a forfeiture incurred can not maintain ejectment, except by actually resuming work before an entry by a person seeking to relocate for the forfeiture, and an ouster by such person.

Slavonian Min. Co. v. Perasich, 7 Fed. 331, p. 337.

The interest of a delinquent deceased owner of a mining claim may be forfeited in the absence of administration by a published notice addressed to such deceased owner and his heirs and to all persons whom it may concern.

Elder v. Horseshoe Min., etc., Co., 9 S. Dak. 636, pp. 637-640.

An original locator can not make effectual a forfeiture arising from his own delinquency by perfecting a relocation.

McCann v. McMillan, 129 Cal. 350.

Ingemarson v. Coffey, 41 Colo. 407, p. 414.

6. PROOF TO ESTABLISH FORFEITURE.

The forfeiture of a mining claim can not be established except upon clear and convincing proof of the failure of the owner of the claim to have the work done or improvements made.

Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 301.

Book v. Justice Min. Co., 58 Fed. 106, p. 118.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 559.

- Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 219.
 McCulloch v. Murphy, 125 Fed. 147, p. 150.
 Willitt v. Baker, 133 Fed. 937, p. 946.
 Wailes v. Davies, 158 Fed. 667, p. 669.
 Bakke v. Latimer, 3 Alaska 95, p. 98.
 Debney v. Iles, 3 Alaska 438, p. 447.
 Providence Gold Min. Co. v. Burke, 6 Ariz. 323, p. 332.
 Colman v. Clements, 23 Cal. 245, p. 247.
 Quigley v. Gillett, 101 Cal. 462.
 Emerson v. McWhirter, 133 Cal. 510.
 Johnson v. Young, 18 Colo. 625, p. 629.
 Strasburger v. Beecher, 20 Mont. 143, p. 151.
 Oreamuno v. Uncle Sam Min. Co., 1 Nev. 215, p. 218.
 Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 132.
 Bishop v. Baisley, 28 Oreg. 119, p. 125.
 Crown Point Min. Co. v. Crismon, 39 Oreg. 364, p. 369.
 Dibble v. Castle Chief, etc., Min. Co., 9 S. Dak. 618, p. 620.
 Axiom Min. Co. v. White, 10 S. Dak. 198, p. 210.
 See Belk v. Meagher, 104 U. S. 279.
 Dolles v. Hamberg Consol. Mines Co., 23 L. D. 267.
 Loeser v. Gardiner, 1 Alaska 641.
 Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 540.
 Maxwell v. Cunningham, 50 W. Va. 298.
 Goldberg v. Bruschi, 146 Cal. 708, p. 712.

The burden of proving a forfeiture rests upon the party who claims a right by reason of such alleged forfeiture.

- Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 301.
 McCulloch v. Murphy, 125 Fed. 147, p. 151.
 Whalen Consol. Copper Min. Co. v. Whalen, 127 Fed. 611.
 Willitt v. Baker, 133 Fed. 937, p. 946.
 Wailes v. Davies, 158 Fed. 667, p. 669.
 Providence Gold Min. Co. v. Burke, 6 Ariz. 323, p. 332.
 Quigley v. Gillett, 101 Cal. 462, p. 469.
 Harris v. Kellogg, 117 Cal. 484, p. 489.
 Emerson v. McWhirter, 133 Cal. 510.
 Swanson v. Kettler, 17 Idaho 321, p. 327.
 Tiggerman v. Mrzlak, 40 Mont. 19, p. 39.
 Axiom Min. Co. v. White, 10 S. Dak. 198, p. 210.
 See Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 540.
 Beals v. Cone, 27 Colo. 473.

Proof of forfeiture under this section and a complete abstract of title and the payment of the money is sufficient to obtain title to a mining claim.

Delmoe v. Long, 35 Mont. 139, p. 149.

The bona fides of a prior locator of a mining claim may be taken into consideration in determining whether he has performed the necessary assessment work to retain his claim, and courts will not enforce a forfeiture except upon clear and convincing proof of the failure of the former locator or owner to perform the required assessment work.

- McKay v. Neussler, 148 Fed. 86, p. 88.
 See Hammer v. Garfield Min. Co., 130 U. S. 291, p. 301.
 Emerson v. McWhirter, 133 Cal. 510.
 Callahan v. James, 141 Cal. 291.
 Quimby v. Boyd, 8 Colo. 194.
 Gear v. Ford, 4 Cal. App. 556, p. 561.

K. ABANDONMENT OF CLAIM.

1. WHAT CONSTITUTES—INTENTION.
2. ABANDONMENT BY FAILURE TO PERFORM WORK.
3. ABANDONMENT BY CONVEYANCE.
4. ABANDONMENT BY ABSENCE.
5. ABANDONMENT BY LAPSE OF TIME.

6. PROOF OF ABANDONMENT.

7. EFFECT OF ABANDONMENT.

8. ABANDONMENT OF PART OR INTEREST—EFFECT.

1. WHAT CONSTITUTES—INTENTION.

Abandonment of a mining claim is a question of intention and such intention is a question of fact to be determined from all the evidence and circumstances of the case.

Omar v. Soper, 11 Colo. 380, p. 390.

Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350, p. 365.

See *Myers v. Spooner*, 55 Cal. 257.

Tay or v. Middleton, 67 Cal. 656.

Weill v. Lucerne Min. Co., 11 Nev. 200, p. 212.

Abandonment of a mining claim takes place when a miner gives up a claim and goes away from it without any intention of holding or repossessing it, and regardless of what may become of it or who may appropriate it.

Harkrader v. Carroll, 76 Fed. 474, p. 475.

An abandonment of a mining claim is the act of the owner or the claimant, and the fact of abandonment depends on the intention of the claimant, and in this respect differs from forfeiture, as a claim may be abandoned before it is forfeited.

Navajo Indian Reservation, In re, 30 L. D. 515.

See *Mallett v. Uncle Sam Gold, etc., Min. Co.*, 1 Nev. 188.

Marshall v. Harney Peak Tin Min., etc., Co., 1 S. Dak. 350, p. 365.

An abandonment by a locator is merely surrendering his right to the exclusive possession given him by the statute, and this exclusive possession remains during the pleasure of the Government.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 451.

To constitute an abandonment of a mining claim there must be a going away and a relinquishment of rights, with the intention never to return, and with a voluntary and independent purpose to surrender the location or claim to the next comer; and therefore abandonment is a question of act and intention, to be found from the intention and the act when considered together in connection with all the circumstances in the case.

Peachy v. Frisco Gold Mines Co., 204 Fed. 659, p. 668.

Permitting other persons to become joint locators is not an abandonment of any right of the original locator.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 458.

An amended location of a lode mining claim made for the purpose of correcting an error in the course of the vein, and in consequence of which the original side lines become end lines, does not operate as an abandonment of all rights under the original location, where such amended location expressly states that such is not the intention; and if such new end lines do not entirely coincide with the original side lines a court may treat as abandoned only so much of the original claim with its planes extended as lay outside the extended end line planes of the amended location.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 603.

See *McEvoy v. Hyman*, 25 Fed. 596.

Thompson v. Spray, 72 Cal. 528.

Hallack v. Traber, 23 Colo. 14.

Duncan v. Fulton, 15 Colo. App. 140.

Morrison v. Regan, 8 Idaho 291.

A mining claim is not abandoned and not subject to relocation where the original claimant has resumed work upon the claim before relocation has been made.

Belcher Consol. Gold Min. Co. v. Defarrari, 62 Cal. 160, p. 162.

See *Tamescal Oil Min., etc., Co. v. Salcido*, 137 Cal. 211, p. 214.

An attempt to relocate an invalid location does not constitute an abandonment or forfeiture of the original location.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 253.

See *Temescal Oil Co. v. Salcido*, 137 Cal. 211.

Weill v. Lucerne Min. Co., 11 Nev. 200.

2. ABANDONMENT BY FAILURE TO PERFORM WORK.

A mining claim may be abandoned by failure to do the required development work.

Donnelly v. United States, 228 U. S. 243, p. 267.

See *Chambers v. Harrington*, 111 U. S. 350, p. 353.

Erhardt v. Boaro, 113 U. S. 527, p. 535.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.

The failure to perform the assessment work as required by this section is an abandonment of a claim, and any other person is authorized to go on the property and relocate it, and where no such work is done during the year the claim on the 1st day of January of the next year is abandoned and forfeited, and subject to relocation, unless the original claimant is then in possession and has resumed work thereon.

Little Gunnel Min. Co. v. Kimber, 15 Fed. Cas. 629, p. 630.

The territory segregated by discovery and location becomes abandoned and subject to relocation on failure to perform the work required by this section, and before resumption of such work, in the same manner as other unappropriated mineral domain.

Johnson v. Young, 18 Colo. 625, p. 627.

See *Omar v. Soper*, 11 Colo. 380.

3. ABANDONMENT BY CONVEYANCE.

A conveyance to another of his interest in a claim is equivalent to an abandonment by the locator of all his rights under the statute.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.

An abandonment by simply leaving the claim is not more efficacious than the conveyance of the rights of the locator and by leaving possession without intention of returning.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 451.

4. ABANDONMENT BY ABSENCE.

Mere absence from a mining claim is not an abandonment where the claimant always asserted a right to the ground, and where there is no evidence of an intention to abandon the claim.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 559.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 591.

A voluntary absence of 9 years from a mining claim and without the exercise of any acts of ownership over it constitutes an abandonment.

Harkrader v. Carroll, 76 Fed. 474, p. 476.

See *Trevaskis v. Peard*, 111 Cal. 599.

Abandonment takes place when a locator voluntarily leaves his claim to be appropriated by the next comer, without any intention to reclaim it, and it becomes effective instantly.

Street v. Delta Min. Co., 42 Mont. 371, p. 386.

See *McKay v. McDougall*, 25 Mont. 258.

5. ABANDONMENT BY LAPSE OF TIME.

Lapse of time does not of itself constitute an abandonment of a mining claim or a mill site used in connection therewith, but is only a circumstance that may be considered in determining the question of abandonment, which is one of intent.

Valcalda v. Silver Peak Mines, 86 Fed. 90, p. 95.

Neither lapse of time, absence from the claim, nor failure to work a mining claim for any definite period, if unaccompanied by other circumstances, are evidence of abandonment, and an original locator may resume work at any time before location; an alleged forfeiture is not complete until another has appropriated the property.

McCarthy v. Speed, 11 S. Dak. 362, p. 370.

6. PROOF OF ABANDONMENT.

Abandonment is a voluntary act which must be proven by competent evidence before the fact can be found to exist.

Lakin v. Sierra Buttes Gold Min. Co. 25 Fed. 337, p. 343.

The question of abandonment of mining claims is one of fact which should be determined upon evidence submitted in due form before the proper officer.

France, Pontez & Co. v. Harrison (Harrington), 5 C. L. O. 66.

Where it is sought to relocate land covered by a former location on the ground of abandonment, the Department should require the relocater first to establish the fact of abandonment in order to justify such relocation.

Gibson, In re, 21 L. D. 219.

The allegation and proof of abandonment are material only in so far as they tend to disclose the estimate placed upon the value of the land for mining purposes by one who has been engaged in the exploration thereof, and who is most interested in sustaining its mineral character.

Coleman v. McKenzie, 28 L. D. 348, p. 353.

A mining claim is not abandoned and is not subject to relocation where it is one of a group of claims, and the owner has adopted a general system of work for the improvement of the entire group, but no work has actually been done upon one of the claims sought to be relocated.

McNeil v. Pace, 3 L. D. 267, p. 309.

7. EFFECT OF ABANDONMENT.

Ground embraced in a mining location may become a part of the public domain so as to become subject to another location before the expiration of the period for performing the assessment work, where there is an actual abandonment of the claim by the first locator.

Farrell v. Lockhart, 210 U. S. 142, p. 147.

Street v. Delta Min. Co. 42 Mont. 371, p. 384.

Swanson v. Kettler, 17 Idaho 321, p. 325.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 269.

See *Belk v. Meagher*, 104 U. S. 279.

Gwillim v. Donnellan, 115 U. S. 45.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220.

Creed & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337.

Brown v. Guerney, 201 U. S. 184.

Lozar v. Neill, 37 Mont. 237.

Nash v. McNamara, 30 Nev. 114, criticising *Lavagnino v. Uhlig*, 198 U. S. 443.

The rights of an original locator are wholly divested by abandonment, and he has nothing thereafter to convey.

Harkrader v. Carroll, 76 Fed. 474, p. 475.

Davis v. Butler, 6 Cal. 510.

Richardson v. McNulty, 24 Cal. 339.

Bell v. Bed Rock, etc., Min. Co., 36 Cal. 214.

Derry v. Ross, 5 Colo. 295.

Mallett v. Uncle Sam Min. Co., 1 Nev. 188.

This section in unequivocal terms declares that the rights of the locator and owner of an abandoned or forfeited claim revert back to the United States at the moment of abandonment or forfeiture, and the claim becomes public land subject to relocation.

Dufresne v. Northern Light Min. Co., 2 Alaska 592, p. 598.

When an abandonment is complete it operates effectually to restore the ground to the public domain.

Street v. Delta Min. Co., 42 Mont. 371, p. 385.

See Black v. Elkhorn Min. Co., 163 U. S. 445, p. 451.

The abandonment of a claim by a locator leaves no right to his wife to claim dower in case of his death; neither can his wife allege a right of dower in case of a conveyance by the locator.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 451.

If the ground once included within the location of a lode mining claim is abandoned, and a new location made thereon, such last location dates only from the relocation thereof, as abandoned ground, and does not date back to or obtain any rights on account of the abandoned location.

Cheesman v. Shreeve, 40 Fed. 787, p. 789.

Slothower v. Hunter, 15 Wyo. 189, p. 197.

When peaceable possession of a mine which had been abandoned by a former locator was taken, and a relocation was made by other persons in their own names, whatever legal title to the claim a third person had by virtue of such prior location made by a partner was cut off.

Lockhart v. Johnson, 181 U. S. 516, p. 529.

Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, p. 267.

8. ABANDONMENT OF PART OF INTEREST—EFFECT.

Where the conflicting portion of a mining claim is abandoned by the senior locator, it does not inure to the benefit of the junior location, but under this section becomes a part of the public domain, subject to location by a third person.

Dufresne v. Northern Light Min. Co., 2 Alaska 592, p. 593.

Montague v. Labay, 2 Alaska 575.

Anderson v. Anvil Hydraulic Co., 3 Alaska 496.

Following Belk v. Meagher, 104 U. S. 279.

Denying Lavagnino v. Uhlig, 198 U. S. 443.

By an abandonment of an undivided interest in a mining claim by a joint locator such locator leaves the claim free to the location of the next comer, but such an abandonment does not operate to transfer his interest to the other owners, and by such abandonment he loses all interest in the claim and can not convey any right to a third person.

Badger Gold Min., etc., Co. v. Stockton Gold., etc., Min. Co., 139 Fed. 838, p. 841.

Where a mining claim was located and possession held by one of two partners for the firm, the abandonment of the claim by the locating partner necessarily terminates the constructive possession of the other partner and leaves the ground open to relocation.

Lockhart v. Johnson, 181 U. S. 516, p. 529.

L. RELOCATION OF CLAIM.

1. WHEN CLAIMS ARE SUBJECT TO RELOCATION.
2. RELOCATION ON EXISTING CLAIM—VALIDITY.
3. ORIGINAL LOCATOR MAY RELOCATE HIS CLAIM.
4. CONDITIONS FOR RELOCATION.
5. FAILURE TO PERFORM STATUTORY REQUIREMENTS.
6. RESUMPTION OF WORK PREVENTS RELOCATION.
7. NO RELOCATION AFTER APPLICATION FOR PATENT AND ENTRY.
8. CLAIMS NOT SUBJECT TO RELOCATION—INSTANCES.
9. RIGHTS AND RELATION OF LOCATOR AND RELOCATOR.
10. RIGHTS OF RELOCATOR.
11. RELOCATION BY AGENT OR TRUSTEE—EFFECT.

1. WHEN CLAIMS ARE SUBJECT TO RELOCATION.

This section authorizes a relocation of forfeited claims.

Lavagnino v. Uhlig, 198 U. S. 443, p. 451.

A mining claim is open to relocation where the first locator fails to comply with the law or abandons his claim, if the original locator, his heirs, assigns, or legal representatives have not resumed work upon the claim before a relocation.

Kirk v. Clark, 17 L. D. 190, p. 194.

A mining claim is subject to relocation where the original owner gives it up and goes away without any intention of repossessing it, and a purchaser from him thereafter acquires no title as against a relocater.

Harkrader v. Carroll, 76 Fed. 474, p. 475.

The statute plainly says that what has been once located under the law shall not be relocated until the first location has expired.

Belk v. Meagher, 104 U. S. 279, p. 285.

McNeil v. Pace, 3 L. D. 267, p. 308.

Street v. Delta Min. Co., 42 Mont. 371, p. 383.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 57.

Wills v. Blain, 4 N. Mex. 378, p. 380.

Wills v. Blain, 5 N. Mex. 238.

2. RELOCATION ON EXISTING CLAIM—VALIDITY.

A relocation can only be made in accordance with the statutory provisions, and a relocation on lands actually covered by another valid and subsisting location is void, not only against the prior locator but all the world, as the statute does not permit it to be done.

Belk v. Meagher, 104 U. S. 279, p. 284.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 78.

Gwillim v. Donnellan, 115 U. S. 45.

Manuel v. Wulff, 152 U. S. 505, p. 511.

McCulloch v. Murphy, 125 Fed. 147, p. 153.

Malone v. Jackson, 137 Fed. 878, p. 881.

McNeil v. Pace, 3 L. D. 267, p. 269.

Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401, p. 405.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 24.

Mt. Rosa Min., etc., Co. v. Palmer, 28 Colo. 56, p. 59.

Rebecca Gold Min. Co. v. Bryant, 31 Colo. 119, p. 123.

Street v. Delta Min. Co., 42 Mont. 371, p. 383.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 57.

Nash v. McNamara, 30 Nev. 114, p. 127.

Lockhart v. Farrell, 31 Utah 155, p. 159.

See *Garthe v. Hart*, 73 Cal. 541.
Armstrong v. Lower, 6 Colo. 393.
McFeters v. Pierson, 15 Colo. 201.
Seymour v. Fisher, 16 Colo. 188.

A relocation of a mining claim can not be made upon land marked and occupied under an attempted prior location, where such prior location is void by reason of failure to comply with the law as to location notice or recording the same, as relocation is authorized only for forfeiture or abandonment of a prior location, and by making a relocation the locator admits the validity of the prior location and precludes himself from contesting it.

Zerres v. Vanina, 150 Fed. 564, p. 565.
 See *Belk v. Meagher*, 104 U. S. 279, p. 284.
Providence Gold Min. Co. v. Burke, 6 Ariz. 323.
Quigley v. Gillett, 101 Cal. 462.
Thompson v. Burke, 2 Alaska 249, p. 254.
Zeiger v. Dowdy, 13 Ariz. 331, p. 334.

A relocater seeking to avail himself of minerals in public lands which another has discovered can not do so until the discoverer has either abandoned his claim or left the property open for another to take, or in some other way his rights have come to an end.

Belk v. Meagher, 104 U. S. 279, p. 284.
Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 78.
Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 295.
Perego v. Erwin, 85 Fed. 904, p. 906.
Porter v. Tonopah North Star Tunnel, etc., Co., 133 Fed. 756, p. 758.
Malone v. Jackson, 137 Fed. 878, p. 881.
Zerres v. Vanina, 150 Fed. 564, p. 565.
Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 97.
McNeil v. Pace, 3 L. D. 267, p. 270.
Anderson v. Byam, 8 L. D. 388, p. 389.
Stewart v. Rees, 25 L. D. 447, p. 448.
Bakke v. Latimer, 3 Alaska 95, p. 99.
Snowy Peak Min. Co. v. Tamarack & Chesapeake Min. Co., 17 Idaho 630, p. 635.
Street v. Delta Min. Co., 42 Mont. 371, p. 383.
Wills v. Blain, 4 N. Mex. 378, p. 380.
Wills v. Blain, 5 N. Mex. 238.

A person attempting to relocate a mine is conclusively presumed to know of the existence of a prior valid location where a patent has been issued.

Alta Min., etc., Co. v. Benson Min., etc., Co., 2 Ariz. 362, p. 371.
 See *Deffebach v. Hawke*, 115 U. S. 392, p. 405.

To hold that before a former location has expired an entry may be made and the several acts done necessary to perfect a location will encourage unseemly contests about the possession of the public mineral bearing lands, which would almost necessarily be followed by breaches of the peace.

Belk v. Meagher, 104 U. S. 279.
Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 99.

A location once made under the law can not be relocated until the first location has expired, until the rights of the former locator have come to an end, and until he has forfeited or abandoned his claim and left the property open for relocation.

Lockhart v. Farrell, 31 Utah 155, p. 159.

Until all the things necessary to make a valid relocation have been done, the locator may resume work upon the claim and prevent forfeiture.

Worthen v. Sidway, 72 Ark. 215, p. 226.
 See *Lakin v. Sierra Buttes Gold Min. Co.*, 25 Fed. 337.
Gonu v. Russell, 3 Mont. 358.

3. ORIGINAL LOCATOR MAY RELOCATE HIS CLAIM.

An original locator, whose location has become subject to forfeiture by reason of his failure to perform the assessment work, may make a relocation or a new location of the same ground on the theory that he is entitled to protect his claim by resuming work before a relocation by any third person.

Warnock v. DeWitt, 11 Utah 324, p. 329.
See Hunt v. Patchin, 35 Fed. 816.

Where the owner of a mining claim failed to perform the annual assessment work and thereafter attempted to relocate the claim and inserted in his relocation notice the statement that the claim was relocated as abandoned property, as required by section 3241, R. S. Ariz., in ignorance of the amendment of March 12, 1907, Session Laws, Ariz., p. 27, omitting the necessity of such statement, and thereafter sank on the ground a discovery shaft, as required, disclosing mineral-bearing rock, the work being sufficient to prevent a forfeiture for failure to perform the assessment work for the preceding year, a court can not say, as a matter of law, that the declaration inserted in such relocation notice was sufficient to show that the claim had in fact been abandoned.

Peachy v. Frisco Gold Mines Co., 204 Fed. 659, p. 667.

4. CONDITIONS FOR RELOCATION.

There can be no entry on a mining claim for the purpose of making a provisional relocation before the owner is in default as to the performance of the annual work, the validity of such relocation to depend on whether the owner failed or not to do such annual work subsequently.

Slavonian Min. Co. v. Perausich, 7 Fed. 331, p. 332.

An agreement between individuals as to the performance of the representation work can not prevent a relocation of public mineral land.

Saunders v. Mackey, 5 Mont. 523, p. 534.

If a prior locator had failed to work his claim as required, and if the default operated as a final settlement of a suit between the prior claimants, then the ground in controversy was subject to relocation.

Continental Gold, etc., Min. Co. v. Gage, 10 L. D. 534.

The relocater of a mining claim impliedly admits that there has been a prior valid location, as there can be no relocation unless there has been a prior valid location or something equivalent thereto, and there can be no relocation until there has been an abandonment or forfeiture of the claim by the first locator.

Zerres v. Vanina, 134 Fed. 610, p. 614.

See Belk v. Meagher, 104 U. S. 279, p. 289.

Providence Gold Min. Co. v. Burke, 6 Ariz. 323.

Quigley v. Gillett, 101 Cal. 462.

Wills v. Blain, 4 N. Mex. 378.

Thompson v. Burke, 2 Alaska 249, p. 254.

Jackson v. Prior Hill Min. Co. 19 S. Dak. 453, p. 458.

This section does not say that the ground shall be opened to relocation if the labor be unperformed and if the claim be unoccupied, but on the contrary the ground is open to relocation if the labor be unperformed; and it does not give the original locator the right as against a relocater to remain in possession and exclude all others, without performing the assessment work.

Du Prat v. James, 65 Cal. 555, p. 557.

Goldberg v. Bruschi, 146 Cal. 708, p. 713.

Where a mining claim was relocated in December and the relocater was only on the land at intervals, which land was unenclosed and on which he made no improvements, and where after January 1 of the following year he did not do the work necessary to

effect a valid relocation, his rights are only those of a simple explorer; and while his possession might be such as would enable him to bring an action of trespass against one who entered without color of right, it was not enough to prevent a peaceable entry made in good faith for the purpose of securing a right to the exclusive possession and enjoyment of the property, and such second relocators, having entered into possession and perfected a relocation, secured thereby the better right.

Belk v. Meagher, 104 U. S. 279, pp. 287, 288.

Malone v. Jackson, 137 Fed. 878, p. 881.

5. FAILURE TO PERFORM STATUTORY REQUIREMENTS.

A failure to perform the statutory requirements opens the claim to a relocation in the same manner as if no location had ever been made, if the assigns or representatives of the original locator have not resumed work after such failure and before relocation.

Jackson v. Roby, 109 U. S. 440, p. 442.

Belk v. Meagher, 104 U. S. 279, p. 282.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 448.

Yosemite Min. Co. v. Emerson, 208 U. S. 25, p. 31.

North Nooday Min. Co. v. Orient, etc., Min. Co., 1 Fed. 522, p. 536.

Jupiter Min. Co. v. Bodie, etc., Min. Co., 11 Fed. 666, p. 681.

Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 295.

Gird v. California Oil Co., 60 Fed. 531, p. 539.

Preston v. Hunter, 67 Fed. 996, p. 1000.

O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 854, p. 855.

Little Pauline v. Leadville Lode, 7 L. D. 506, p. 508.

Ferguson v. Belvoir, etc., Min. Co., 14 L. D. 43, p. 44.

Ring v. Montana Loan & Realty Co., 33 L. D. 132, p. 133.

Yard, In re, 38 L. D. 59, p. 64.

Higgins v. John Gold Min. Co., 14 C. L. O. 238.

Carney v. Arizona Gold Min. Co., 65 Cal. 40, p. 41.

Anthony v. Jillson, 83 Cal. 296, p. 300.

Snowy Peak Min. Co. v. Tamarack & Chesapeake Min. Co., 17 Idaho 630, p. 635.

McCarthy v. Speed, 11 S. Dak. 362, p. 371.

A third person can not enter upon the actual possession of another for the purpose of laying foundation for a preemption claim to public lands and on which to make a valid mining location, but this principle does not apply where the original locator has failed to perform the annual labor as required by this section, although such claim is occupied by the original locator.

Du Prat v. James, 65 Cal. 555, 557.

Goldberg v. Bruschi, 146 Cal. 708, p. 713.

See *Weese v. Barker*, 7 Colo. 178.

Eilers v. Boatman, 3 Utah 159.

A mining claim becomes subject to relocation when the locator fails to perform the required annual labor, and there is no complete forfeiture until a third person acquires title to the claim.

Worthen v. Sidway, 72 Ark. 215, p. 226.

See *Little Gunnell Gold Min. Co. v. Kimber*, 15 Fed. Cas. 629.

Oscamp v. Crystal River Min. Co., 58 Fed. 293.

6. RESUMPTION OF WORK PREVENTS RELOCATION.

When a claim is open to relocation because of the failure to make the annual expenditure of labor and improvements, if the work is thereafter renewed on the claim before a relocation is actually made, the rights of the original owner stand as if there had been no failure to comply with the statute in this respect.

Belk v. Meagher, 104 U. S. 279, p. 282.

Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 296.

Debnay v. Iles, 3 Alaska 438, p. 448.

Anderson v. Byam, 8 L. D. 388, p. 389.

Jordan v. Duke, 6 Ariz. 55, p. 70.
 Worthen v. Sidway, 72 Ark. 215, p. 226.
 Harris v. Kellogg, 117 Cal. 484, p. 489.
 Honaker v. Martin, 11 Mont. 91, p. 95.
 Lacey v. Woodward, 5 N. Mex. 583, p. 589.
 Bishop v. Baisley, 28 Oreg. 119, p. 125.

The statute does not authorize a person to trespass upon or to relocate a claim previously located by another, however derelict such locator may be in performing the required work, provided he has returned and resumed work and is actually engaged in developing his claim at the time such second locator attempts to secure the claim.

North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522, p. 536.
 Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 682.
 McNeil v. Pace, 3 L. D. 267, p. 270.
 Honaker v. Martin, 11 Mont. 91, p. 94.
 Hirschler v. McKendricks, 16 Mont. 211, p. 213.
 See Gonu v. Russell, 3 Mont. 358.

A relocation of a mining claim made because of the failure to perform the assessment work, but afterwards abandoned, can not aid a subsequent relocation made after the original claimant had performed the required assessment work.

Justice Min. Co. v. Barclay, 82 Fed. 554, p. 561.
 Anderson v. Anvil Hydraulic Co., 3 Alaska 496, p. 505.
 See Bishop v. Baisley, 28 Oreg. 119.

A locator who has not performed the annual labor or made the required improvements within the statutory period must show that he has resumed work before an alleged relocation was made, and the proviso of the statute calls for an affirmative showing on his part, but the burden can be met by proof either of the annual labor done at the proper time, or that work was resumed before the alleged location.

McKnight v. El Paso Brick Co., 16 N. Mex. 721, p. 743.

A mining claim is not subject to relocation for failure to perform the assessment work if work has been resumed after the expiration of the year and before any relocation is attempted.

Peachy v. Frisco Gold Mines Co., 204 Fed. 659, p. 666.

When a forfeiture of a mining claim has been occasioned the claim or ground upon which such failure occurred is then open to relocation in the same manner as if no location had ever been made, if the original locator or his representatives have not resumed work upon the claim before such relocation.

Lockhart v. Farrell, 31 Utah 155, p. 159.

The Government or a subsequent locator is the only one who can complain of a failure on the part of a locator of a mining claim to do the necessary annual work, and the subsequent locator is not in a position to make complaint until he has completed a valid location; and if prior to that time the original locator has resumed work in good faith his previous delinquency is of no consequence.

Thornton v. Kaufman, 40 Mont. 282, p. 286.
 See Temescal Oil Min., etc., Co. v. Salcido, 137 Cal. 211.

Where the locator of a mining claim fails to perform his representation work for any year, but resumes work in good faith before another location is made, he thereby preserves his right to the claim, and no relocation can be made after such resumption of work, but the work must be prosecuted with reasonable diligence until the requirement is satisfied.

Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 539.
 Worthen v. Sidway, 72 Ark. 215, p. 226.
 See North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.
 Honaker v. Martin, 11 Mont. 91, p. 94.
 Hirschler v. McKendricks, 16 Mont. 211, p. 213.

7. NO RELOCATION AFTER APPLICATION FOR PATENT AND ENTRY.

The provisions subsequent to this section preclude the assertion of an adverse claim of prior inception after entry, and there can be no valid relocation of a mineral claim subsequent to its entry in the local land office.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.

See *Nielson v. Champagne Min., etc., Co.*, 29 L. D. 491, p. 493.

A mining claim is not subject to relocation on the ground that the applicant has not performed the annual assessment work during the pendency of his application for a patent, where he has paid the purchase price and has received a certificate therefor.

Aurora Hill, etc., Min. Co. v. Eighty-five Min. Co., 34 Fed. 515, p. 517.

An attempted relocation of mining ground included in whole or in part in a pending application for patent is invalid where the original application is seasonably prosecuted to completion and passed to entry.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 208.

See *Stemmons v. Hess*, 32 L. D. 220, p. 222.

So far as this section declares mineral land subject to relocation on failure of the original locator or owner to make the specified annual expenditures, it contemplates only the period prior to entry.

American Hill Quartz Mine, In re, 5 C. L. O. 114.

A relocation can only be made after forfeiture, and as no forfeiture can take place until one year after entry, a relocation made prior to the expiration of one year would be premature and unavailing.

Smith v. Van Clief, 6 C. L. O. 2.

See *American Hill Quartz Mine*, In re, 5 C. L. O. 114.

A patent certificate issued upon final payment of the purchase price is equivalent to a patent, but until that time abandonment or a failure to perform the annual work subjects the claim to relocation.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 27.

See *Continental Gold, etc., Min. Co. v. Gage*, 10 L. D. 534.

Ferguson v. Belvoir, etc., Min. Co., 14 L. D. 43.

Distinguishing Benson Min., etc., Co. v. Alta Min., etc., Co., 148 U. S. 428, and *Deno v. Griffin*, 20 Nev. 249.

On cancellation of an entry of a mining claim for cause, the land is not subject to relocation as abandoned property, but is subject to location as a part of the public domain not otherwise appropriated.

Lowe, In re, 9 C. L. O. 192, p. 193.

A relocation by an adverse mineral claimant during the period covered by an order holding a claim for cancellation will not give the relocater such an interest as will entitle him to be heard as against the right of an entryman.

Smuggler Min. Co. v. Trueworthy Lode Claim, 19 L. D. 356, p. 359.

8. CLAIMS NOT SUBJECT TO RELOCATION—INSTANCES.

A locator and a relocater of a mining claim stand in different attitudes in relation to a mining claim, and the original locator is a discoverer of the mineral therein contained, while a relocater is not a discoverer but an appropriator of the mineral, and he can not hold the claim except upon proof that the original locator has abandoned or forfeited his rights by failure to comply with the mining laws.

Zerres v. Vanina, 134 Fed. 610, p. 614.

The fact that a locator was absent from his claim about nine months and that some of his stakes had fallen down does not render his location subject to relocation, as actual possession of a mining claim is not essential to the validity of the title obtained by a valid location.

Zerres v. Vanina, 134 Fed. 610, p. 618.

Where the required amount of labor or improvements have in good faith been performed on a mining claim it is not subject to relocation.

Nesbitt v. De Lamar's Nevada Gold Min. Co., 24 Nev. 273, p. 280.

A relocation of a placer mining claim can not be made on an existing location on the ground that it is excessive, as such a location is void only as to the excess, and until the locator has been advised of such excess and has had a reasonable time to make his selection, his possession extends to the entire location, and it was so far segregated from the public domain as to exempt it entire from relocation.

Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 98.

No valid relocation can be made of a mining claim where it is occupied by an agent for the original locator, and where the relocater has full notice of both the occupancy and the agency.

Tripp v. Dunphy, 28 L. D. 14, p. 15.

A valid relocation of a mining claim can not be made by an entry by stealth at one o'clock in the morning of January 1 and posting the notice of such relocation, though the boundaries were not marked on the surface until January 5, and at the usual hour for commencing work on the first day of January of the same year the original locator resumed work and did the required amount of work up to January 5.

Pharis v. Muldoon, 75 Cal. 284, p. 287.

See Honaker v. Martin, 11 Mont. 91, p. 94.

Where the locator of a mining claim commenced his annual assessment work on December 26, and caused his employees to continue such work at proper hours until Saturday night, December 30, when the work was stopped, leaving the tools and implements on the claim, and where they returned on Monday morning, January 1, and continued at work until the required amount had been done, third persons could not enter upon such claim after 12 o'clock on Sunday night and initiate any rights or make a valid relocation of any part of such claim, as the resting from the work by the employees of the original locator from Saturday night until Monday morning was not an abandonment of the work or the possession of the claim, and such original locator did resume work before any valid relocation was made.

Fee v. Durham, 121 Fed. 468, p. 470.

Willitt v. Baker, 133 Fed. 937, p. 946.

Honaker v. Martin, 11 Mont. 91, p. 95.

See Belk v. Meagher, 104 U. S. 279.

Anderson v. Anvil Hydraulic Co., 3 Alaska 505.

Belcher Consol. Gold Min. Co. v. DeFarrari, 62 Cal. 160.

Pharis v. Muldoon, 75 Cal. 284.

Hirschler v. McKendricks, 16 Mont. 211, p. 212.

Bishop v. Baisley, 28 Ore. 119.

After a mining claim has been located in conformity with the mining laws and regulations it is not subject to relocation as long as the locator or his successor in interest continues to perform the labor or make the improvements required, and the fact that the owner of a mining claim failed to record an affidavit of labor and improvements as required by a State statute does not render the claim subject to relocation.

Murray Hill Min., etc., Co. v. Havenor, 24 Utah 73, p. 82.

9. RIGHTS AND RELATION OF LOCATOR AND RELOCATOR.

See sec. 2326, R. S., p. 467.

An original locator will not be heard to question the validity of a relocation in a proceeding instituted to determine whether the locator has complied with the law in the matter of the annual statutory expenditure.

Sweeney v. Wilson, 10 L. D. 157, p. 159.

See Little Pauline v. Leadville Lode, 7 L. D. 506.

Matters which estop a second locator from showing that the premises in dispute were unoccupied mineral lands at the time of his location, deny to him the protection of the relocation provisions of this section.

Lavagnino v. Uhlig, 198 U. S. 443, p. 452.

Nash v. McNamara, 30 Nev. 114, p. 127.

See Farrell v. Lockhart, 210 U. S. 142.

The power conferred by this section to relocate a forfeited claim does not place the locator in privity of title with the owner of the prior and forfeited location.

Lavagnino v. Uhlig, 198 U. S. 443, p. 452.

Swanson v. Kettler, 17 Idaho 321, p. 331.

There is no privity between the first locator of a mining claim and a subsequent relocater, where the relocation was not made in furtherance of the prior location but was in fact made in hostility to such prior location.

Burke v. Southern Pac. R. Co., 234 U. S. 699.

Under the provisions of this section a relocater can not get a patent for a claim attempted to be relocated, unless he secures what is here made the equivalent of a valid location by actually holding and working the claim for the requisite time.

Belk v. Meagher, 104 U. S. 279, p. 287.

Malone v. Jackson, 137 Fed. 878, p. 881.

Nash v. McNamara, 30 Nev. 114, p. 127.

A relocater describing himself as such admits that he is not a discoverer of mineral but an appropriator thereof on the ground that the original discoverer had perfected his right and his notice of relocation is an admission of record that such relocater claims a forfeiture by reason of a failure of the first locator to make his annual expenditure.

Zerres v. Vanina, 150 Fed. 564, p. 566.

Wills v. Blain, 4 N. Mex. 378.

The rights of the first locator either on or beneath the surface can in no manner be diminished or affected by a subsequent location.

Del Monte Min., etc., Co. v. Last Chance Min. Co., 171 U. S. 55, p. 79.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 542.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 591, p. 601.

In case of a conflict of boundaries between a senior and a junior location, and where the senior location is subsequently forfeited and a relocation is made by a third person, such third person as the relocater, does not acquire the right, in adverse proceedings, to assail the title of such original junior locator, as to the conflict area previously existing between his location and the senior location so forfeited.

Lavagnino v. Uhlig, 198 U. S. 443, p. 453.

See Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401, p. 407.

Farrell v. Lockhart, 210 U. S. 142.

10. RIGHTS OF RELOCATOR.

A relocater who has rightfully entered a forfeited mining claim and made a valid relocation has the right to hold the claim as against a trespasser. After such entry

he has the same rights as the original locator, without complying with the local rules or customs, or the United States mining laws.

Slavonian Min. Co. v. Perasich, 7 Fed. 331, p. 332.

A relocation made under this section on the failure of a prior locator to perform the annual labor or assessment work gives the locator a valid ownership in the claim, good against the whole world save the Government.

Dufresne v. Northern Light Min. Co., 2 Alaska 592, p. 597.

Anderson v. Anvil Hydraulic Co., 3 Alaska 496, p. 500.

Following *Belk v. Meagher*, 104 U. S. 279.

Denying *Lavagnino v. Uhlig*, 198 U. S. 443.

A protestant making a contest and claiming under a relocation of a mining claim made after the application and before entry, in accordance with the provisions of this section, has the right of appeal.

Martin v. Granite Mountain Min. Co., 15 C. L. O. 50, p. 51.

See *Martin v. Granite Mountain Min. Co.*, 15 C. L. O. 194.

A person who has relocated an abandoned claim can not claim any benefits arising from improvements made thereon prior to such abandonment, as all such improvements were lost by the abandonment of the claim.

Embry, In re, 7 C. L. O. 5, p. 6.

A purchaser of several original placer claims or locations can not by a relocation embody the several original locations avoid the statutory expenditure of \$500 for each original claim.

Good Return Min. Co., In re, 4 L. D. 221, p. 222.

11. RELOCATION BY AGENT OR TRUSTEE—EFFECT.

An agent, trustee, cotenant, or other person holding confidential relations with an original locator or the owner of a mining claim, who attempts, in violation of a contract or in breach of the trust, to relocate or fraudulently obtains title to the claim in his own name, will be charged in equity as a trustee of the rightful owner, and he will not be permitted to secure any advantage by such attempted relocation or title obtained.

Turner v. Sawyer, 150 U. S. 578, pp. 584, 586.

See *Lakin v. Sierra Buttes Gold Min. Co.*, 25 Fed. 337.

Hunt v. Patchin, 35 Fed. 816.

Thompson v. Burke, 2 Alaska 249, p. 253.

Fisher v. Seymour, 23 Colo. 542.

Mills v. Hart, 24 Colo. 505, p. 508.

Van Wagenen v. Carpenter, 27 Colo. 444.

Ballard v. Golob, 34 Colo. 417, p. 423.

Lockhart v. Rollins, 2 Idaho 503, p. 514.

Largey v. Bartlett, 18 Mont. 265.

O'Neill v. Otero, 15 N. Mex. 707, p. 720.

Utah Min., etc., Co. v. Dickert, etc., Co., 6 Utah 183.

Argentine Min. Co. v. Benedict, 18 Utah 183.

M. COOWNERS.

1. NATURE OF ESTATE AND RELATION OF COTENANTS.
2. WHO ARE AND WHO ARE NOT COOWNERS.
3. PERFORMANCE OF ASSESSMENT WORK BY ONE COOWNER.
4. REMEDY AGAINST DELINQUENT COOWNER.
5. DELINQUENCY OF COOWNER—EFFECT.
6. NOTICE TO DELINQUENT COOWNER NECESSARY.
7. PUBLICATION AGAINST COOWNER—SUFFICIENCY.
8. CONVEYANCE BY COOWNER—EFFECT ON RIGHT TO FORFEIT.

9. INTEREST OF COOWNER TO BE FORFEITED.
10. PROOF TO ESTABLISH FORFEITURE.
11. RIGHTS AND TITLE ACQUIRED BY FORFEITURE.
12. TITLE ACQUIRED BY CONVEYANCE BY COOWNER.
13. LIABILITY OF COOWNER AS TRUSTEE.
14. PATENT PROCEEDINGS BY ONE COOWNER.

1. NATURE OF ESTATE AND RELATION OF COTENANTS.

Cotenants of a mining claim hold by unity of possession and the possession of one is presumed to be for the benefit of all, and the purchase of a hostile or outstanding title or encumbrance upon the joint estate by one cotenant inures to the benefit of all.

Turner v. Sawyer, 150 U. S. 586.

Ritter, In re, 37 L. D. 715, p. 717.

See Franklin Min. Co. v. O'Brien, 22 Colo. 129.

Mills v. Hart, 24 Colo. 505.

Van Wagenen v. Carpenter, 27 Colo. 444, p. 456.

Lockhart v. Rollins, 2 Idaho 503.

Brundy v. Mayfield, 15 Mont. 201.

Cedar Canyon Min. Co. v. Yarwood, 27 Wash. 271, p. 280.

The rights of coowners under this section apply alike to placer and lode locations.

Sweet v. Webber, 7 Colo. 443, p. 448.

See Chapman v. Toy Long, 5 Fed. Cas. 497; 4 Sawy. 33.

One of a number of locators of a certain claim can concurrently with such joint location, locate a separate claim independent of his colocators, and one of such joint locators may make a valid relocation of a claim abandoned by such joint location.

Boehmer, In re, 8 C. L. O. 3.

When one cotenant asserts that he has divested his cotenant of his interest in the common property, a court will examine the circumstances under which the alleged divestiture has been brought about, and will deny the claim unless the facts existed authorizing the invocation of the provision and the prescribed notice has been given in strict conformity with the statutory requirement.

O'Hanlon v. Ruby Gulch Min. Co. (Mont.), 135 Pac. 913, p. 917.

See Turner v. Sawyer, 150 U. S. 578.

Elder v. Horseshoe Min. Co., 194 U. S. 248.

Billings v. Aspen Min., etc., Co., 51 Fed. 338.

Royston v. Miller, 76 Fed. 50.

Evalina Gold Min. Co. v. Yosemite Gold Min. Co., 15 Cal. App. 714.

Brundy v. Mayfield, 15 Mont. 201.

Elder v. Horseshoe Min. Co., 9 S. Dak. 636.

Cotenants of mining property can not be deprived of their inchoate rights by the tortious acts of others, nor can intruders and trespassers initiate any right which would defeat those of prior discoverers.

Lockhart v. Leeds, 10 N. Mex. 568, p. 597.

See Erhardt v. Boaro, 113 U. S. 527, p. 534.

One cotenant can recover possession of an entire mining claim as against all persons except his cotenants.

Erhardt v. Boaro, 113 U. S. 527, p. 537.

Field v. Tanner, 32 Colo. 278, p. 290.

See Weese v. Barker, 7 Colo. 178.

2. WHO ARE AND WHO ARE NOT COOWNERS.

A person having merely an inchoate title, such as the holder of a sheriff's certificate of purchase, is not a coowner within the meaning of this statute.

Repeater & Other Lode Claims, In re, 35 L. D. 54, p. 56.

See Turner v. Sawyer, 150 U. S. 578.

A stockholder who has no title separate and distinct from that of the corporation which is the owner of a mining claim is in no sense a coowner with the corporation or with the other shareholders of such corporation.

Repeater & Other Lode Claims, In re, 35 L. D. 54, p. 55.
Yard, In re, 38 L. D. 59, p. 68.

The owner of an interest in a mining claim, who holds an option for the purchase of an interest of another coowner who has failed to contribute his proportionate share of the assessment work, has such an interest in the claim as to entitle him to make a tender of the amount due from such coowner, and thereby prevent a forfeiture of such interest.

Knickerbocker v. Halla, 177 Fed. 172, p. 175.

3. PERFORMANCE OF ASSESSMENT WORK BY ONE COOWNER.

When a location is made by two or more persons they become coowners, and one or more of such coowners may perform the required assessment work and thereby continue the right of themselves and coowners to the exclusive possession of the claim; but if the work is done by one or more the law requires the other coowners to contribute their share of the expense, and upon failure to do so their interest in the claim is subject to forfeiture on proper notice to such coowners, or if they are dead, to their heirs.

Elder v. Horseshoe Min. etc. Co., 9 S. Dak. 636, p. 642.

The abandonment of a mining claim by one locator, or the refusal by him to contribute his proportion of the cost of the assessment work, does not work the destruction of the entire location, but his interest may become the property of his coowners when they make the required expenditures.

Miller v. Chrisman, 140 Cal. 440, p. 451.

The fact that the locators or owners of a mining claim are tenants in common does not affect the question of representation, as mining claims so owned must be represented as if owned by one person, and representation work under this section is a unit, and coowners or cotenants are given a sufficient remedy against coowners who fail to perform their part of the work.

Saunders v. Mackey, 5 Mont. 523, p. 534.

The possession of a mining claim by one cotenant is possession by all tenants, and the failure of one cotenant to perform the assessment work does not thereby forfeit his possession.

Mining Co. v. Taylor, 100 U. S. 37, p. 40.
Van Valkenburg v. Huff, 1 Nev. 142.
Lockhart v. Leeds, 10 N. Mex. 568, p. 597.

The policy exhibited by this section would be ill subserved if a coowner of an unpatented mining claim could safely refuse or neglect to cooperate or contribute to the annual assessment work, and inasmuch as the duty here imposed upon a coowner is not alone to his associates but is also because of considerations of the common welfare.

Van Sice v. Ibex Min. Co., 173 Fed. 895, p. 897.

4. REMEDY AGAINST DELINQUENT COOWNER.

This section gives one coowner who performs the assessment work a remedy against his coowner who fails to contribute his share of such work, and points out the method by which the remedy may be enforced.

Chambers v. Harrington, 111 U. S. 350, p. 352.
Turner v. Sawyer, 150 U. S. 578, p. 584.
Black v. Elkhorn Min. Co., 163 U. S. 445, p. 448.
Emerson, In re, 29 L. D. 611.
Emerson v. Yosemite Gold Min., etc., Co., 149 Cal. 50, p. 54.
McCarthy v. Speed, 11 S. Dak. 362, p. 370.
McCarthy v. Speed, 12 S. Dak. 7, p. 9
See Suesenbach v. First National Bank, 5 Dak. 477.

The purpose of the provisions requiring coowners to contribute to the assessment is to afford a speedy, convenient, and effective method of taking from one cotenant his interest in the property and giving it to another without the intervention of courts.

O'Hanlon v. Ruby Gulch Min. Co. (Mont.), 135 Pac. 913, p. 917.

The forfeiture proceedings provided for by a coowner is a strictly statutory and summary remedy, and when the conditions are complied with wholly divests the delinquent coowner of his entire right and interest, but such a statute must be strictly construed and its terms fully complied with.

Repeater & Other Lode Claims, In re, 35 L. D. 54, p. 56.

See Golden & Cord Lode Min. Claims, In re, 31 L. D. 178.

The mere fact that a colocator does not contribute to the assessment work does not deprive him of his interest in the claim or transfer it to another; but this section provides the method in which one colocator can forfeit the right or interest on the latter's failure to contribute his proportion of the assessment work.

Faubel v. McFarland, 144 Cal. 717, p. 720.

There may be an implied promise on the part of a coowner of a mining claim to pay his part of the assessment work, as required by this section, as well as his part of the expense of procuring a patent.

McDaniel v. Moore, 19 Idaho 43, p. 48.

This section providing for the extinguishment of the interest of a coowner for a failure to contribute to the work of exploration and development, is part of the very law upon which he is compelled to rely for the source of his title and the existence of any right whatever, and he can not claim a vested interest freed from the statutory conditions which qualify it, and the right and its limitations necessarily go together.

Van Sice v. Ibex Min. Co., 173 Fed. 895, p. 896.

A coowner of a mining claim is not personally responsible for any part of the assessment work, but the remedy given by this section is exclusive.

McDaniel v. Moore, 19 Idaho 43, p. 47.

A coowner who has not made the required expenditures under this statute on his own behalf is not within its terms, and is not in a position to take advantage of its forfeiture provision.

Golden & Cord Lode Mining Claims, In re, 31 L. D. 178, p. 181.

5. DELINQUENCY OF COOWNER—EFFECT.

A coowner who fails to do his assessment work on the mine may, under this section, be "advertised out," and his coowners obtain title to the entire claim.

Evalina Gold Min. Co. v. Yosemite Gold Min., etc., Co., 15 Cal. App. 714, p. 716.

Riste v. Morton, 20 Mont. 139, p. 141.

Upon the failure of any coowner to contribute his proportionate share of the required expenditures after notice, his interest in the claim may become the property of the coowners.

Forbes v. Gracey, 9 Fed. Cas. 401, p. 404.

Where a part owner of a tunnel fails or refuses to contribute his proportion of the assessment work upon a lode, or in running a tunnel for the purpose of developing a lode or lodes held by joint owners, the coowners may proceed against him under this section.

Hunter, In re, *Copp's Min. Lands* 222.

A delinquent coowner who has failed to contribute his proper proportion to the assessment work may prevent a forfeiture of such interest by payment or by proper tender made within the time stated in a valid notice of forfeiture.

Knickerbocker v. Halla, 177 Fed. 172, p. 174.

The remedy of a coowner failing to contribute his proportion of the actual expenditures upon a mining claim must be sought elsewhere than in the General Land Office.

Brooks, *In re*, 5 C. L. O. 4.

6. NOTICE TO DELINQUENT COOWNER NECESSARY.

One coowner may forfeit the interest of another coowner by proper notice for failure to perform his part of the assessment work.

Hawgood v. Emery, 22 S. Dak. 573, p. 574; 119 N. W. 177.

This section provides that upon the failure of any one of several coowners of a mining claim to contribute his proportion of the annual assessment work, the coowners who have performed the work or made the required expenditure may, at the expiration of the year, by personal service or by publication, give such delinquent coowner notice, and may forfeit his interest in the property if he fails to pay within 90 days.

Knickerbocker v. Halla, 162 Fed. 318.

See Knickerbocker v. Halla, 177 Fed. 172.

The right to give the notice provided by this section is limited to a coowner who has performed the required labor.

Turner v. Sawyer, 150 U. S. 578, p. 584.

Badger Gold Min., etc., Co. v. Stockton Gold, etc., Min. Co., 139 Fed. 838, p. 841.

The coowners of a mining claim, under this section, are not prohibited from signing the notice of forfeiture from the fact that they had conveyed to a trustee for the purpose of adjusting conflicting neighboring claims, as they were still the beneficial owners, and it was their duty and right to protect the title.

Van Sice v. IbeX Min. Co., 173 Fed. 895, p. 897.

There is no irregularity in grouping in one notice claims for more than one year's expenditures; and no reason is perceived why the consolidation of claims of several years may not be made and included in one notice.

Elder v. Horseshoe Min., etc., Co., 194 U. S. 248, p. 256.

Where part of the coowners of a mining claim who performed the assessment work gave personal notice to a delinquent coowner, but which, because of insufficiency, was supplemented by a printed notice published in compliance with the statute, may forfeit the interest of such delinquent coowner if payment is not made within the time stipulated by such last notice.

Knickerbocker v. Halla, 177 Fed. 172, p. 175.

Part owner of a mining claim must give his delinquent coowner notice, by writing or by publication for 90 days, before his interest can be forfeited for failure to contribute to the assessment work.

Ballard v. Golob, 34 Colo. 417, p. 423.

Notice requiring a coowner to contribute to the expense of annual representation work can not be served on an administrator of a deceased coowner, as the heirs, upon the death of the coowner, became the coowners on whom notice must be served.

O'Hanlon v. Ruby Gulch Min. Co. (Mont.), 135 Pac. 913, p. 916.

7. PUBLICATION AGAINST COOWNER—SUFFICIENCY.

The statute requires a publication at least once each week for 90 days, and a daily publication from January 7 to April 2, of the same year is sufficient.

Elder v. Horseshoe Min., etc., Co., 194 U. S. 248, p. 256.

Evalina Gold Min. Co. v. Yosemite, etc., Min. Co., 15 Cal. App. 714, p. 718.

The 90-day period spoken of in the statute begins with the first publication of the notice.

Elder v. Horseshoe Min., etc., Co., 194 U. S. 248, p. 256.

A publication on each succeeding Monday for the entire period of 90 days constitutes at least one publication each week.

Elder v. Horseshoe Min., etc., Co., 194 U. S. 248, p. 257.

The phrase in this section "for at least once a week during 90 days" means at least once a week during 90 days there must be at least one publication in each week during the prescribed period, thus making the notice to continue 90 days, and the 90-day period begins with the first publication.

Elder v. Horseshoe Min., etc., Co., 15 S. Dak. 124, p. 125.

There can be no question about the effect of a notice rightly published under this section.

Van Sice v. Ibex Min. Co., 173 Fed. 895, p. 897.

See *Elder v. Horseshoe Min., etc., Co.*, 194 U. S. 248.

8. CONVEYANCE BY COOWNER—EFFECT ON RIGHT TO FORFEIT.

A coowner of a mining claim can not transfer to another by a conveyance of his interest the right to forfeit the interest of another coowner by reason of the failure to perform his part of the assessment work, where the grantor had performed the work before he made the transfer.

Emerson, In re, 29 L. D. 611, p. 612.

A coowner who conveyed his interest in a mining claim after performing the assessment work on the failure of another coowner may, by the proper proceedings, acquire the interest of such other coowner.

Emerson, In re, 29 L. D. 611, p. 613.

Where a part owner of a mining claim performs the assessment work in a particular year and conveys the claim to a corporation taking in payment its capital stock, this does not preclude a forfeiture of the coowner's interest for failure to contribute to the work.

Squires, In re, 40 L. D. 542, p. 546.

See *Badger Gold Min., etc., Co. v. Stockton Gold, etc., Min. Co.*, 139 Fed. 838.

On the abandonment of his interest by one of several coowners of a mining claim the other coowners may acquire his interest by performing the annual assessment work and by giving the notice as provided by this section, at the end of the year; and the fact that such coowners had assigned or conveyed the claims to a corporation, taking in payment its stock which they held, did not preclude the forfeiture of the interest of such coowners for failure to contribute to the work by performing the work and by giving the notice as required.

Badger Gold Min., etc., Co. v. Stockton Gold, etc., Min. Co., 139 Fed. 838, p. 842.

9. INTEREST OF COOWNER TO BE FORFEITED.

The interest of a coowner to which the forfeiture provision of this section relates, and which may be acquired under and in accordance with its provisions, is such coowner's share or interest in the purely possessory rights which subsist under a mining location, and not in any right acquired under an application for a patent.

Surprise Fraction, etc., Lode Claims, In re, 32 L. D. 93.

10. PROOF TO ESTABLISH FORFEITURE.

An applicant for a patent as coowner of a mining claim and claiming the forfeit of interest of another coowner must show in what manner the notice of forfeiture was

served, and that the delinquent coowner did not, within the required time, pay his proportionate share of the annual expenditure.

Grampian Lode, In re, 1 L. D. 544.

Before a part owner can forfeit the interest of his coowner in a mining claim, he must show that the forfeiting owner has failed to contribute his proportion of the expenditures required by this section.

Brundy v. Mayfield, 15 Mont. 201, p. 206.

A joint owner of a mining claim can not by the mere publishing or serving a notice on his coowner acquire his title or interest in such claim when the facts upon which such notice was given did not exist.

Brundy v. Mayfield, 15 Mont. 201, p. 208.

An applicant proceeding against a coowner, under this section, should file with his application for a patent a copy of the original notice of location, and an abstract of title, a copy of the notice published to delinquent coowners, including their names, with the proper proof of publication, and the affidavit of the claimant making the required expenditures, with the corroborating affidavit, showing the character and extent of improvements made upon the claim and the time of making, and also an affidavit showing that the coowners named have not contributed to their proportion of the required expenditure.

Whedon, In re, 4 C. L. O. 50.

On failure of a coowner to contribute his proportion of the improvements after notice, a copy of the notice, with proof of service or publication, should be recorded in the proper recorder's office, together with the sworn statement of the parties making the expenditures, that such expenditures had been made by them, and after due notice the coowner had failed to contribute within 90 days after the service of the notice.

Brooks, In re, 5 C. L. O. 4.

11. RIGHTS AND TITLE ACQUIRED BY FORFEITURE.

The forfeiture proceedings authorized by this section can only be taken by a coowner of a mining claim, and a person basing title on such a forfeiture must show that he was a coowner.

Robbins, In re, 42 L. D. 481, p. 484.

The interest of a coowner acquired under the forfeiture provisions is the share or interest in the purely possessory rights in the mining location, and not in any rights arising in the application for patent, and a coowner who has been omitted from an application can not, by subsequent recourse to forfeiture proceedings, acquire any right in himself to make entry under the application.

Squires, In re, 40 L. D. 542, p. 545.

See Surprise Fraction, etc., Lode Claims, In re, 32 L. D. 93.

The title accruing to a coowner by rightful notice under this section is similar to that conveyed by a sheriff's deed after judgment and execution sale, as each results from a default in obligation followed by proceedings authorized by law.

Van Sice v. Ibex Min. Co., 173 Fed. 895, p. 898.

When the statutory notice has been rightfully published it effectually cuts off all the claims of all parties and thereby keeps the title free and clear from uncertainty and doubt.

Elder v. Horseshoe Min., etc., Co., 194 U. S. 248, p. 256.

The purpose of the mining statute was to encourage the exploration, development, and sale of the mineral lands of the United States, and all of the provisions of the mining statutes have been framed with this object in view, and where the required

assessment work is not performed within the statutory period, and notice of contribution has been properly served or sufficiently published, the rights of a delinquent coowner are absolutely cut off, and the title is perfected in the other coowners performing the work.

Evalina Gold Min. Co. v. Yosemite Gold Min., etc., Co., 15 Cal. App. 714, p. 718.

Parties who have made the required annual expenditure may, at any time after the expiration of the year within which such expenditures were made, give notice to delinquent coowners, and upon failure of such coowners to contribute their interest in the mine becomes the property of the party making the improvements.

Brooks, In re, 5 C. L. O. 4.

Labor performed and improvements made by joint locators can not be claimed as credits by one of such joint locators who has made a valid relocation in his separate right on abandonment by the joint locators.

Boehmer, In re, 8 C. L. O. 3.

See *Jackson v. Dyer*, 8 C. L. O. 3.

12. TITLE ACQUIRED BY CONVEYANCE BY COOWNER.

On the theory that one colocator may acquire the rights and title of all locators to a placer mining claim of 160 acres, there is no reason why he can not acquire title by conveyance to him of the rights of his colocators instead of title by abandonment and by refusal to join in the work.

Miller v. Chrisman, 140 Cal. 440, p. 451.

13. LIABILITY OF COOWNER AS TRUSTEE.

A joint owner and manager of a mining claim who, by arrangement with other joint owners and for good reasons, made a relocation of a mining claim in his individual name holds the relocated claim in trust for all the joint owners.

Hunt v. Patchin, 35 Fed. 816.

Royston v. Miller, 76 Fed. 50, p. 53.

Lockhart v. Washington Gold, etc., Min. Co., 16 N. Mex. 223, p. 231.

Butte Hardware Co. v. Cobban, 13 Mont. 351, p. 360.

See *Lockhart v. Leeds*, 195 U. S. 427.

Reedy v. Weeson, 1 Alaska 570, p. 574.

Copper River Min. Co. v. McClelland, 2 Alaska 134, p. 144.

Thompson v. Burke, 2 Alaska 249, p. 252.

McMahon v. Meehan, 2 Alaska 278, p. 281.

Cascaden v. Dunbar, 2 Alaska 408, p. 412.

Elliott v. Elliott, 3 Alaska 352, p. 360.

Gore v. McBrayer, 18 Cal. 582.

Van Wagenen v. Carpenter, 27 Colo. 444, p. 456.

Ballard v. Golob, 34 Colo. 417, p. 423.

Lockhart v. Rollins, 2 Idaho 503.

Hibour v. Reeding, 3 Mont. 15.

Welland v. Huber, 8 Nev. 203.

Lockhart v. Leeds, 10 N. Mex. 568.

O'Neill v. Otero, 15 N. Mex. 707, p. 720.

One coowner can not obtain title to the claim as against his coowner by relocating the claim on the ground that the required annual assessment work had not been done.

Speed v. McCarthy, 181 U. S. 269, p. 273.

Where an agent or one part owner of a mining claim fraudulently makes a relocation in his own name or procures a patent in his own name, he holds it in trust for his principal or coowners.

Suessenbach v. First National Bank, 5 Dak. 477, p. 504.

If part of the coowners apply for patent for a mining claim and exclude a coowner, they will hold the title in trust for all.

Butte Hardware Co. v. Cobban, 13 Mont. 351, p. 360.

Brundy v. Mayfield, 15 Mont. 201, p. 211.

Delmoe v. Long, 35 Mont. 139, p. 156.

See Lakin v. Sierra Buttes Gold Min. Co., 25 Fed. 337.

Golden & Cord Lode Min. Claims, In re, 31 L. D. 178.

Where a title is held in trust, the rights of the parties may be determined by a bill in equity.

Turner v. Sawyer, 150 U. S. 578, p. 586.

Lockhart v. Johnson, 181 U. S. 516, p. 529.

A cotenant or joint owner of a mining claim may enforce a trust where another cotenant has taken title in his own name.

Lockhart v. Johnson, 181 U. S. 516, p. 530.

See Doherty v. Morris, 11 Colo. 12.

Saunders v. Mackay, 5 Mont. 523.

14. PATENT PROCEEDINGS BY ONE COOWNER.

Where one coowner of a mining claim makes an application for a patent for the entire claim and pending the application his interest in the claim is forfeited by a coowner for failure to perform his part of the assessment work, the application lapses, as in such case the other coowner can not base his right to a patent on the application made by the coowner whose interest has been forfeited.

Surprise Fraction, etc., Lode Claims, In re, 32 L. D. 93.

Coowners of a mining claim who procure a forfeiture of the interest of a delinquent coowner must comply strictly with the statute, and such coowners can not procure a patent for the claim without showing notice and that the alleged delinquent coowner failed to contribute his part of the assessment work.

Turner v. Sawyer, 150 U. S. 578, p. 586.

Grampian Lode, In re, 1 L. D. 544.

Eldred v. Lasey, 6 C. L. O. 34.

The coowner of a mining claim who obtained the interest of another coowner by forfeiture stands in such an attitude of hostility to such coowner as to occupy the position of a protestant who alleges a material default upon the part of his coowner who has made an application for a patent in his own name.

Surprise Fraction, etc., Lode Claim, In re, 32 L. D. 93, p. 94.

See Marburg Lode Min. Claim, In re, 30 L. D. 202.

Cleveland v. Eureka No. 1 Gold Min., etc., Co., 31 L. D. 69.

Where coowners have not been properly notified for the purpose of forfeiting their interest in a mining claim, or where they have to pay their share of assessment work, they must still file their adverse claim as contemplated in section 2325, and, on failure to do so, they waive their rights, and the law assumes that no such adverse claim exists, and under such circumstances the department may assume that the notice of forfeiture was given as required, and that such delinquent coowner has not paid his share of the assessment work.

Grampian Lode, In re, 1 L. D. 544.

See Cunningham, In re, 10 C. L. O. 206.

An excluded cotenant is not required to adverse an application for patent.

Turner v. Sawyer, 150 U. S. 578, p. 587.

Suessenbach v. First National Bank, 5 Dak. 477.

McCarthy v. Speed, 11 S. Dak. 362, p. 370.

McCarthy v. Speed, 12 S. Dak. 7, p. 9.

N. MINERAL SURVEYORS.

1. APPOINTMENT AND DUTIES. ,
2. SURVEY OF CLAIMS—EXPENSES.
3. LAND OR MINERAL DISTRICT.

1. APPOINTMENT AND DUTIES.

The surveyors general of the several districts are authorized to appoint in each land district as many competent surveyors for the survey of mining claims as may seek such appointment, but all expenses of notices and surveys must be borne by mining claimants and not by the United States, and a return of a mineral surveyor will not be recognized as official unless it is over the signature of a United States deputy mineral surveyor and made pursuant to a special order from the surveyor general's office, and on making a survey the deputy must return correct filed notes thereof to the surveyor general's office.

Fish & Hunter Co. v. New England Homestake Min. Co., 28 S. Dak. 588, p. 589.

Deputy mineral surveyors appointed under this section are required to give bond.

Campbell, In re, 4 C. L. O. 35.

2. SURVEY OF CLAIMS—EXPENSES.

In making a survey for a patent the surveyor general may ascertain and locate the true line of the apex in order to fix the boundaries of the claim.

Harper v. Hill, 159 Cal. 250, p. 255.

See *Howeth v. Sullenger*, 113 Cal. 547, p. 551.

By this section an applicant for patent for a mining claim shall pay the expenses of the survey.

Hanson, In re, 38 L. D. 469, p. 471.

This section does not, nor do the regulations passed by the department, create any contractual relation, either express or implied, between a mineral claimant and a deputy mineral surveyor, and in no case can the United States Government be required to pay for a survey, though made by one of its own deputy mineral surveyors, but the regulations are not binding either upon a deputy or upon a mineral claimant, but the matter of employment and the manner and amount of payment are left wholly to the option of the claimant and such deputy.

Fish & Hunter Co. v. New England Homestake Min. Co., 28 S. Dak. 588, p. 590.

The claims held in common under this section may mean separate locations, and the survey required shall exhibit the boundaries of each location covered by the application.

Mackie, In re, 5 L. D. 199, p. 201.

See *Argillite Ornamental Stone Co.*, In re, 29 L. D. 585, p. 586.

Golden Sun Min. Co., In re, 6 L. D. 808.

3. LAND OR MINERAL DISTRICT.

The land district containing mineral lands for which the surveyor general may appoint competent surveyors under this statute is a division of a State or Territory created by law in which is located the land office for the disposition of the public lands therein.

United States v. Smith, 11 Fed. 487, p. 491.

O. JURISDICTION OF COURTS—FEDERAL QUESTIONS.

Federal questions which determine the jurisdiction of Federal courts may arise under this section of the statute.

Elder v. Horsehoe Min., etc., Co., 194 U. S. 248, p. 253.

The mere failure to perform the annual assessment work does not involve a construction of this section so as to give jurisdiction to a Federal court where there is no dispute between the parties as to the amount of work to be done upon a mining claim in a particular year, and where no question of law is presented as to what constitutes a resumption of work.

Wise v. Nixon, 76 Fed. 3, p. 4.

P. AMENDMENTS TO SECTION 2324, REVISED STATUTES**AMENDMENT 1.**

17 Stat. 483, March 1, 1873.

AN ACT To amend an act entitled "An act to promote the development of the mining resources of the United States."

Be it enacted, etc., That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May 10, 1872, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the 10th day of June, 1874.

A. TIME FOR MAKING ANNUAL EXPENDITURE.**B. GENERAL SYSTEM OF WORK.****A. TIME FOR MAKING ANNUAL EXPENDITURE.**

By this amendment the time for making the annual expenditure on a mining claim was extended to June 10, 1874.

Belk v. Meagher, 104 U. S. 279, p. 282.

Diamond Creek Gold, etc., Co. v. Lloyd, 9 C. L. O. 54.

See *Loefer v. Gardiner*, 1 Alaska 641, p. 648.

Ambergris Min. Co. v. Day, 12 Idaho 108, p. 120.

Minnie Tunnel and Mining Co., In re, 3 C. L. O. 66.

By this amendment the annual expenditure on claims then in existence could be made at any time before January 1, 1875, and annually thereafter until a patent issued, and such claims are not open to relocation during such time.

Belk v. Meagher, 104 U. S. 279, p. 282.

Diamond Creek Gold, etc., Co. v. Lloyd, 9 C. L. O. 54.

See *Loefer v. Gardiner*, 1 Alaska 641, p. 648.

Ambergris Min. Co. v. Day, 12 Idaho 108, p. 120.

By this amendment the time for performing labor or making improvements on mining claims was extended.

Thompson v. Jacobs, 3 Utah 246, p. 249.

B. GENERAL SYSTEM OF WORK.

A general system of work and development may be devised if adopted and intended to develop several contiguous claims, and work in furtherance of such system entitles the owner to credit, though done outside of any claim, if done for the purpose and as a means of developing and working the claim.

AMENDMENT 2.

18 Stat. 61, June 6, 1874.

AN ACT To amend the act entitled "An act to promote the development of the mining resources of the United States," passed May 10, 1872.

Be it enacted, etc., That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May 10, 1872, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act be extended to January 1, 1875.

A. TIME FOR MAKING ANNUAL EXPENDITURES EXTENDED.

By this act the time for expenditures of labor and improvements on mining claims is extended to June 1, 1875.

Belk v. Meagher, 104 U. S. 279, p. 282.

Lacey v. Woodward, 5 N. Mex. 583, p. 589.

Under this amendment the exclusive possessory right of the original owner of a mining claim were continued without any work until January 1, 1875, and accordingly the year in which the required work could be done began on the 1st day of January and ended on the 31st day of December of that year, and as the law fixes no time within the year when the work must be done it is sufficient if it is done any time during such year, and there can be no forfeiture until the entire year has passed; and where the original claimant resumed work during the year, before any relocation had been made, this satisfied the demand of the statute and operated to continue it for another entire year, or until the last day of December, 1876, and no valid location could be made prior to that date.

Belk v. Meagher, 104 U. S. 279, p. 283.

Slavonian Min. Co. v. Perasich, 7 Fed. 331.

See *Farrell v. Lockhart*, 210 U. S. 142, p. 148.

Mills v. Fletcher, 100 Cal. 142.

Original Co., etc., v. Winthrop Min. Co., 60 Cal. 631.

McGinnis v. Egbert, 8 Colo. 41.

Atkins v. Hendree, 1 Idaho 95.

Belk v. Meagher, 3 Mont. 65.

AMENDMENT 3.

18 Stat. 315, February 11, 1875.

AN ACT To amend section 2324 of the Revised Statutes, relating to the development of the mining resources of the United States.

Be it enacted, etc., That section 2324 of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

A. TUNNEL CONSTRUCTION AS ASSESSMENT WORK.**B. TUNNEL CLAIMS—KINDS.**

A. TUNNEL CONSTRUCTION AS ASSESSMENT WORK.

By this amendment the work on a tunnel in a mine dispenses with work on the surface, and such work is taken and considered as work expended on the lode, whether located prior or subsequent to the passage of the act.

Chambers v. Harrington, 111 U. S. 350, p. 355.

Carretto & Other Lode Claims, In re, 35 L. D. 361.

Merrell, In re, 5 C. L. O. 5.

Dodge, In re, 6 C. L. O. 122, p. 123.

Hoyt, In re, 8 C. L. O. 71.

Under this act the line of the tunnel is not required to be located and marked on the surface, nor does it require a notice in order to entitle the owner to a credit on his lode, as these are required only as to blind tunnels.

Hoyt, In re, 8 C. L. O. 71.

This amended section does not require notice of a tunnel location or of discoveries made within a tunnel.

Hoyt, In re, 8 C. L. O. 71.

This section does not affect the character of other work to be done or improvements to be made according to the law before the section took effect, except as it gives a special value to making a tunnel.

Aldebaran Min. Co., In re, 36 L. D. 551.

See *Chambers v. Harrington*, 111 U. S. 350, p. 355.

Book v. Justice Min. Co., 58 Fed. 106, p. 117.

B. TUNNEL CLAIMS—KINDS.

There is no distinction between a tunnel claim under which a tunnel is run for the development of veins or lodes already located, and one pursuant to which a tunnel is projected for blind veins or lodes.

Adams, In re, 42 L. D. 456, p. 457.

Under this act a tunnel driven under the provisions of section 2323 R. S. for the development of lodes can be accredited as an improvement common thereto, whether the purpose is to claim any blind veins discovered on the line of the tunnel or not.

Dawson, In re, 40 L. D. 17, p. 20.

The method of development of one or more claims by means of a tunnel under this amendment was not provided for by section 2324 R. S., unless such tunnel was on one of a group of continuous claims held in common, but this amendment can not be limited by construction to the effect that work done on the tunnel is not available to several claims unless they are contiguous; but the amendment permits a credit for work on the tunnel without regard to the contiguity or noncontiguity of the claims.

Hain v. Mattes, 34 Colo. 345, p. 349.

AMENDMENT 4.

21 Stat. 61, January 22, 1880.

AN ACT To amend sections 2324 and 2325 of the Revised Statutes of the United States concerning mineral lands.

Be it enacted, etc.

* * * * *

SEC. 2. That section 2324 of the Revised Statutes of the United States be amended by adding the following words: "Provided, That the period within which the work required to be done annually on

all unpatented mineral claims shall commence on the 1st day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the 10th day of May, A. D. 1872."

See section 2325, p. 288.

A. PURPOSE OF AMENDMENT—UNIFORM DATE FOR COMMENCEMENT OF WORK.

B. DEVELOPMENT WORK—TIME OF MAKING.

C. IMPROVEMENTS—MEANING, p. 285.

D. ASSESSMENT WORK—LODE AND PLACER CLAIMS, p. 285.

A. PURPOSE OF AMENDMENT—UNIFORM DATE FOR COMMENCEMENT OF WORK.

The purpose of this amendment is to establish a uniform period for the commencement of the work or the making of the improvements required by the statute and was made to correspond with the calendar year, and the exemption of claims from performance of labor for the portion of a year in some cases was a necessary result of this amendment.

McGinnis v. Egbert, 8 Colo. 41.

Hall v. Hale, 8 Colo. 351.

See Northmore v. Simmons, 97 Fed. 386, p. 390.

Haynes, In re, 7 C. L. O. 130.

Wheeler, In re, 7 C. L. O. 130.

Hill, In re, Copp's Min. Lands 295.

This statute, for the purpose of convenience, provides that the period within which all annual assessment work has to be done shall commence on the 1st day of January succeeding the date of location of a claim.

Quigley v. Gillett, 101 Cal. 462, p. 468.

Madison v. Octave Oil Co., 154 Cal. 768, p. 773.

Nash v. McNamara, 30 Nev. 114, p. 136.

See Good Return Min. Co., In re, 4 L. D. 221.

Hill, In re, Copp's Min. Lands 295.

This act seeks to fix the calendar year as the uniform period in which the annual improvements required by section 2324 R. S. must be made, and as locations are made at different dates throughout the year, the first annual expenditures are due on January 1 next following the location, and thereafter they become due with the expiration of each calendar year.

Copp, In re, 7 C. L. O. 20.

B. DEVELOPMENT WORK—TIME OF MAKING.

A claim located on any date subsequent to the 1st day of January, 1879, requires no expenditure during the remainder of that year, unless required by local laws or regulations.

Hill, In re, Copp's Min. Lands 295.

This act provides that all annual assessment work to be done on unpatented mining claims shall be commenced on the 1st day of January succeeding the date of location, and this statute can not be retroactive so as to divest a right a mineral claimant had already acquired under existing laws.

Hall v. Hale, 8 Colo. 351, p. 352.

Under this amendment to section 2324 R. S., the time for performing the annual assessment work on mining claims is extended until January 1, 1893, and a failure to perform such work prior to that date renders the claim open to relocation.

Bishop v. Baialey, 28 Oreg. 119, p. 125.

Where a claim is located after the date of this act requiring an expenditure to sink the necessary shaft, it will not be necessary to perform the remaining part of the work required to complete the annual expenditure until the 31st day of December of the year following, as the year within which the annual expenditure must be completed begins to run from the 1st day of January next succeeding the date of the location.

Hale, In re, 7 C. L. O. 115.

This amendment requires that the period within which the annual work to be done on unpatented mining claims located since May 10, 1872, shall commence on the 1st day of January next succeeding the date of the location, and where such period begins on the 1st day of January of any year it continues during the entire year and expires on December 31 of such year.

Malone v. Jackson, 137 Fed. 878, p. 880.

A mining claim located October 1, 1879, requires the expenditure of \$100 worth of labor or improvements thereon within the calendar year 1880, and any expenditures made during the year 1879 will not answer the requirements of expenditures in 1880.

Hill, In re, Copp's Min. Lands 295.

C. IMPROVEMENTS—MEANING.

The word "improvement," as used in this act, as well as in section 2324 R. S., means such an artificial change of the physical conditions of the earth upon or so reasonably near a mining claim as to evidence a design to discover mineral therein or to facilitate its extraction, and the alterations must reasonably be permanent in character.

Fredericks v. Klauser, 52 Oreg. 110, p. 116.

This act requires an expenditure annually of not less than \$100 in labor or improvements upon each unpatented claim located after May 10, 1872, excepting the year when the location is made.

Fredericks v. Klauser, 52 Oreg. 110, p. 116.

D. ASSESSMENT WORK—LODE AND PLACER CLAIMS.

This amendatory act clearly shows that the annual assessment work is to be performed alike upon lode and placer locations.

Carney v. Arizona Gold Min. Co., 65 Cal. 40, p. 41.

AMENDMENT 5.

28 Stat. 6, November 3, 1893.

AN ACT To amend section 2324 of the Revised Statutes of the United States relating to mining claims.

Be it enacted, etc., That the provisions of section numbered 2324 of the Revised Statutes of the United States, which require that on each claim located after the 10th day of May, 1872, and until patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year, be suspended for the year 1893, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for nonperformance of the annual assessment for the year 1893: Provided, That the claimant or claimants of any mining location, in order to secure the benefits of this act shall cause to be recorded in the office where the location notice

or certificate is filed on or before December 31, 1893, a notice that he or they, in good faith intend to hold and work said claim: Provided, however, That the provisions of this act shall not apply to the State of South Dakota.

This act shall take effect from and after its passage.

A. ASSESSMENT WORK SUSPENDED—NOTICE OF INTENTION TO HOLD CLAIM.

This amendment suspends the requirements of section 2324 so that a mining claim should not be subject to forfeiture for the nonperformance of the assessment work for that year, if a notice of intention to hold and work the claim is properly filed.

De Lamar's Nevada Gold Min. Co. v. Nesbitt, 177 U. S. 523, p. 526.

Royston v. Miller, 76 Fed. 50, p. 52.

Cain v. Addenda Min. Co., 24 L. D. 18, p. 20.

It was the intention of Congress in passing this act, as well as that of July 18, 1894 (28 Stat. 114), suspending the requirements of section 2324 R. S., as to the annual labor on mining claims, that the recording of the prescribed notice should have the same legal effect as performing the labor.

Nesbitt v. De Lamar's Nevada Gold Mining Co., 24 Nev. 273, p. 283.

It is sufficient to file the good faith notices required by this act in lieu of the annual expenditure, the performance of which was excused by these statutes.

Hughes v. Ochsmier, 26 L. D. 540, p. 543.

This act suspended the provision of section 2324 requiring \$100 worth of labor performed or improvements made during the year 1893.

Peachy v. Frisco Gold Mines Co., 204 Fed. 659, p. 666.

AMENDMENT 6.

28 Stat. 114, July 18, 1894.

AN ACT To amend section 2324 of the Revised Statutes of the United States relating to mining claims.

Be it enacted, etc., That the provisions of section numbered 2324 of the Revised Statutes of the United States, which require that on each claim located after the 10th day of May, 1872, and until patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year, be suspended for the year 1894, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for nonperformance of the annual assessment for the year 1894: Provided, That the claimant or claimants of any mining location, in order to secure the benefits of this act, shall cause to be recorded in the office where the location notice or certificate is filed on or before December 31, 1894, a notice that he or they in good faith intend to hold and work said claim: Provided, however, That the provisions of this act shall not apply to the State of South Dakota.

SEC. 2. That this act shall take effect from and after its passage.

A. ASSESSMENT WORK SUSPENDED.

This amendment simply suspends the time for the performance of the assessment work, and the claim is not subject to relocation where the assessment work is suspended by this act.

De Lamar's Nevada Gold Min. Co. v. Nesbitt, 177 U. S. 523, p. 526.
See Royston v. Miller, 76 Fed. 50, p. 52.

This act suspended the provisions of section 2324 during the year 1894.

Peachy v. Frisco Gold Mines Co., 204 Fed. 659, p. 666.

Where the locator had the proper notices filed and recorded, declaring his intention in good faith to hold and work a mine, such mine is not subject to relocation for failure to do the assessment work for the years 1893 and 1894, where such assessment work was done in each of the subsequent years 1895, 1896, and 1897.

De Lamar's Nevada Gold Min. Co. v. Nesbitt, 177 U. S. 523, p. 526.

In order to secure the provisions of this amendment the locator or owner of a mining claim must file the good faith notice as required, and such notice is sufficient to justify the allowance of an entry.

Hughes v. Ochaner, 26 L. D. 540, p. 543.

AMENDMENT 7.

30 Stat. 651, July 2, 1898.

AN ACT To relieve owners of mining claims who enlist in the military or naval service of the United States from performing assessment work.

Be it enacted, etc., That the provisions of section 2324 of the Revised Statutes of the United States, which require that on each claim located after the 10th day of May, 1872, and until patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year, shall not apply to claims or parts of claims owned by persons who may enlist in the Volunteer Army or Navy of the United States for service in a war between this country and Spain, so that no mining claim or any part thereof owned by such person which has been regularly located and recorded shall be subject to forfeiture for nonperformance of the annual assessments until six months after such owner is mustered out of the service, or if he should not survive the war, then six months after his death in service.

SEC. 2. That those desiring to take advantage of this act shall file, or cause to be filed, a notice in the clerk's office where the location certificate of said mine is recorded before the expiration of the assessment year, giving notice of his enlistment, and of his desire to hold said claim under this act.

SEC. 3. That if any such enlisted soldier or sailor has a coowner or coowners in any mining claim, and who are not in the Army or Navy, and such coowner or coowners fail to do such a proportion of \$100 worth of work per annum as the interest of such nonenlisted person or persons bears to the whole claim, then such interest shall be open to relocation by any other qualified person or persons by their doing the necessary work thereon and filing an affidavit of labor showing the forfeiture, and that the relocators had done the annual work required of such nonenlisted persons and succeeded them in right under this act, which work may be done at any time after the expiration of the assessment year and before the former owners resume work thereon. The work and affidavit aforesaid shall operate as a transfer of said forfeited interest from the former owners to said relocators.

A. ENLISTED PERSONS EXEMPT FROM ASSESSMENT WORK.

An enlisted person being an owner of a patented mining claim, who files in the proper clerk's office the notice required by this act, is relieved of the necessity of doing the annual assessment work required by section 2324, R. S., and the filing of such notice is equivalent in all respects to, and is attended with, the same consequences that result from the actual performance of the work.

Field v. Tanner, 32 Colo. 278, p. 283.

A mining claim owned by an enlisted person is not subject to relocation for failure to perform the annual assessment work for the year 1899, where the owner was mustered out in March of that year, and where in August of the same year the owner in good faith took steps to perform the annual assessment work for that year, and found the claim in possession of another.

Field v. Tanner, 32 Colo. 278, p. 286.

AMENDMENT 8.

38 Stat. 235, December 1, 1913.

AN ACT To amend section 2324 of the Revised Statutes of the United States relating to mining claims.

Be it enacted, etc., That the provision of section 2324 of the Revised Statutes of the United States, which requires that on each claim located after the 10th day of May, 1872, and until patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year, be suspended for the year 1913 as to mining claims situated on Seward Peninsular, in the district or Territory of Alaska west of longitude 158 and north of latitude 64, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations within such area so described shall be subject to forfeiture for nonperformance of the annual assessment for the year 1913. Provided, That the claimant or claimants of any mining location in order to secure the benefits of this act shall cause to be recorded in the office where the location notice and certificate is filed on or before December 31, 1913, a notice that he, she, or they in good faith intend to hold or work said claim: And provided further, That this amendment shall in no way annul, modify, or repeal said section as to any mining claims, either in the district of Alaska or elsewhere, except those said mining claims with the area herein particularly described.

AMENDMENT 9.

34 Stat. 1243, March 2, 1907.

See section 162, Alaska Compiled Laws, p. 879.

SECTION 2325, REVISED STATUTES.

A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of 60 days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the 60 days of publication, shall file with the register a certificate of the United States surveyor-general that \$500 worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent.

At the expiration of the 60 days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the 60 days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of \$5 per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

This section is the same as section 6, act of May 10, 1872 (17 Stat. 91, p. 92), p. 679.

- A. PATENT PROCEEDINGS—CONSTRUCTION OF SECTION.
- B. LAND DEPARTMENT AND OFFICERS, p. 292.
- C. APPLICATION FOR PATENT, p. 299.
- D. SURVEY OF MINING CLAIM, p. 337.
- E. IMPROVEMENTS AND EXPENDITURES, p. 344.
- F. NOTICE OF APPLICATION FOR PATENT, p. 356.
- G. ADVERSE CLAIMS—PROCEEDINGS AND SUIT, p. 370.

H. PROTEST AND PROTESTANT, p. 385.

I. ENTRY, p. 390.

J. PATENT—ISSUANCE, p. 400.

K. AMENDMENTS TO SECTION 2325 B. S., p. 426.

A. PATENT PROCEEDINGS—CONSTRUCTION OF SECTION.

1. SCOPE AND PURPOSE.
2. NATURE OF PROCEEDINGS.
3. DISPOSAL OF MINERAL LANDS.
4. NATURE AND REGULATION OF CLAIMS BEFORE PATENT.

1. SCOPE AND PURPOSE.

This, with section 2326, prescribes the procedure which a party or an association seeking a patent must follow.

Smelting Co. v. Kemp, 104 U. S. 636.

Tilden v. Intervenor Min. Co., In re, 1 L. D. 572.

Harper v. Hill, 159 Cal. 250, p. 254.

Meyendorf v. Frohner, 3 Mont. 282, p. 323.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 410.

Mattingly v. Lewisohn, 8 Mont. 259, p. 263.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 37.

This section points out the only manner in which a patent for mineral lands can be obtained, and the provision that any person authorized to locate a claim and having done so "may file" his application for patent under oath, means that he alone "must file the application," and the authority of the statute extends only to the person, association, corporation, and the coowner must file his own application under oath.

Dodge, In re, 6 C. L. O. 122.

Igo Bridge Extension Placer, In re, 38 L. D. 281, p. 282.

United States v. Fickett, 205 Fed. 134, p. 135.

See *Kempton Mine*, In re, 1 C. L. O. 178.

Jefferson Min. Co. v. Pennsylvania Min. Co., 1 C. L. O. 66.

This section prescribes the method and the conditions in pursuance of which and in the absence of any adverse claim the possessory rights of the locator of a mining claim may be carried on for legal title.

Hidee Gold Min. Co., In re, 30 L. D. 420, p. 425.

This and the following sections form part of the general scheme in reference to the mineral lands of the United States.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 586.

Lands belonging to the United States can not be lawfully located or title thereto by patent be legally acquired under the mining laws for purposes or uses foreign to those of the mining or development of mineral, as it was never intended that public lands be possessed and held and title acquired under the mining laws for purposes and uses not essential to mining or mining operations.

Grand Canyon R. Co. v. Cameron, 36 L. D. 66, p. 71.

This section leaves the question of what will support a good possessory title and proceeds to declare the conditions on which the property can be purchased and patent obtained, and the proof as to expenditures under this section does not refer to annual improvements, but are incident to the possessory title, and the conditions on which a patent may issue refers to those conditions only which are essential to the right of purchase.

American Hill Quartz Mine, In re, 5 C. L. O. 114, p. 115.

The provisions of this section apply to applications for a placer patent.

Northern Pacific R. Co. v. Cannon, 54 Fed. 252, p. 256.

2. NATURE OF PROCEEDINGS.

The proceedings to obtain a patent under this section is in the nature of a proceeding in rem, and is binding upon all the world, so far as any unrepresented adverse claim is concerned.

Hamilton v. Southern Nevada Gold, etc., Min. Co., 33 Fed. 562, p. 565.

This section prescribes the procedure to be taken to procure patent to mineral land and states the presumption that shall follow if no adverse claim is filed.

Behrends v. Goldsteen, 1 Alaska 518, p. 519.

Buena Vista Electric Light Co., In re, 18 C. L. O. 208.

The proceedings on application for patent to a mining claim before the land department are ex parte unless an adverse claim is filed, and when filed the proceedings are referred to the courts, but in all other cases they are heard and determined in the Land Department.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 47 (dissenting opinion).

This section prescribes the necessary steps to be taken by an applicant to obtain a patent for mineral land, and in the absence of an adverse claim it shall be assumed that the applicant is entitled to patent on proof that he has complied with the law.

Marshall Silver Min. Co. v. Kirtley, 12 Colo. 410, p. 414.

Lee v. Stahl, 13 Colo. 174, p. 176.

3. DISPOSAL OF MINERAL LANDS.

The purchase by a mineral claimant of public land under the mineral laws is a pre-emption.

Dornen v. Vaughn, 16 L. D. 8, p. 11.

The provision that all lands valuable for minerals are reserved from sale is the perfection of the plan adopted by Congress for the disposal of public mineral lands.

Utah v. Allen, 27 L. D. 53, p. 55.

This section extends only to the person, association, or corporation qualified to locate a mining claim, who has located a piece of land for such purpose and complied with the terms of the mining laws, and by implication gives the same right to the grantee of the original location, but the applicant or applicants must have acquired full possessory rights or title to come within the provisions of this section.

Lackawanna Placer Claim, In re, 36 L. D. 36, p. 38.

Provisions for classifications of mineral lands by the laws of Spain and Mexico are similar to provisions of this section, and the disposition of mineral lands under either Government was a matter of revenue.

United States v. San Pedro & Cannon del Agua Co., 4 N. Mex. 225, p. 304.

This section makes no provision for granting any extralateral rights.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 49.

Under this section the only matters mentioned for examination and consideration relate to the surface of the ground, and there is no provision for any determination of subterranean rights.

Lawson v. United States Min. Co., 207 U. S. 1, p. 16.

Affirming United States Min. Co. v. Lawson, 134 Fed. 769.

Mineral lands located as a mining claim are referred to as "a piece of land."

Tomera Placer Claim, In re, 33 L. D. 560.

4. NATURE AND REGULATION OF CLAIMS BEFORE PATENT.

This section contains nothing which prevents local legislatures from legislating upon matters relating to the regulation of mining claims.

O'Donnell v. Glenn, 8 Mont. 248, p. 258.

Lands located under this and other sections of the mining laws are called mining claims, and the locators are regarded as owners antecedent to the entry for patent.

Allan v. Dunlap, 24 Oreg. 229, p. 233.

The term "valuable deposits" in this section, the expression "lands valuable for mineral" in section 2318 R. S., the term "valuable mineral deposits" in section 2319 R. S., as well as the word "mines" in section 2323 R. S., and "mines of gold" in section 2392 R. S., all refer substantially to the same thing and embrace both lodes and veins and placers.

Hawke v. Deffeback, 4 Dak. 20, p. 33.

B. LAND DEPARTMENT AND OFFICERS.

1. JURISDICTION AND AUTHORITY.
2. AUTHORITY OF SECRETARY OF THE INTERIOR.
3. JURISDICTION TO ORDER HEARING.
4. MATTERS TO BE PASSED UPON—DUTIES AND POWERS.
5. JUDICIAL CHARACTER OF PROCEEDINGS.
6. DETERMINATION OF DEPARTMENT CONCLUSIVE.
7. DEPARTMENT WITHOUT JURISDICTION.
8. TERMINATION OF JURISDICTION.
9. REJECTION OF APPLICATION—EFFECT AND POWER.
10. COURT DECISIONS BINDING ON DEPARTMENT.
11. AUTHORITY TO ISSUE PATENTS—CONCLUSIVENESS.

1. JURISDICTION AND AUTHORITY

There must be a strict compliance with the law before the Land Department can obtain jurisdiction to issue a patent for a mining claim.

Hoffman v. Venard, 14 L. D. 45, p. 46.

The law and the rules of practice contemplate that the primary decision on the merits of a mineral applicant's case shall be made by the local officers, subject to the supervisory control of the Commissioner of the Land Office, and in case of an appeal and a decision on a question of law the record is to be returned to the local office for a decision on the merits.

Albion Consol. Min. Co., In re, 4 L. D. 376, p. 377.

Where it is made to appear that a mining claim or interest therein has not been conveyed the Land Department has jurisdiction to dispose of the same under the mining laws, and the Department can institute inquiry into the facts and decide for itself whether the title has passed by the patent, or it may delay action until the facts shall be found by some court of competent jurisdiction and then act upon the finding of the court.

South Star Lode, In re, 20 L. D. 204, p. 209.

See *Iron Silver Min. Co. v. Campbell*, 135 U. S. 286.

The Land Department in the exercise of its supervision over the disposition of public lands, may waive questions affecting the regularity of proceedings and render such judgment as seems proper.

Montana v. Silver Star Min. Co., 23 L. D. 313.
See Pike's Peak Lode, In re, 14 L. D. 47.

The Land Department has power to recall a defective patent with the consent of the patentee.

Simmons, In re, 7 L. D. 283, p. 286.
See United States v. Schurz, 102 U. S. 378.

Where an abandonment occurs subsequent to the publication of notice of an application for patent, and prior to entry and payment, the Executive Department must take jurisdiction because the law in such cases allows the abandoned ground to be again located in the same manner as if no location had ever been made, and makes no provision for the determination of any question or controversy arising out of this class of conflicting claims, and an adverse claim in such case can only be filed after the period of publication.

Wheeler, In re, 7 C. L. O. 130, p. 132.

The Land Office will decline to consider an uncorroborated protest where the facts alleged and upon which a hearing is asked are not matters of record, but the corroboration of a protest is not a prerequisite to its recognition as a proper basis for inquiry where the facts charged are shown by records of which judicial notice must be taken by the officers of the Land Department.

Draper v. Wells, 25 L. D. 550, p. 553.
See Pierce v. Bond, 22 L. D. 345.
Utah v. Allen, 27 L. D. 53, p. 54.

After entry and until patent has issued the department has full and complete jurisdiction of all entries not confirmed by statute, and purchasers on faith of the receiver's receipt do so at their own risk.

Wingate Placer, In re, 22 L. D. 704, p. 705.

The Land Department is charged with the duty of administering the provisions of this section relating to proceedings for obtaining patents to public mineral lands.

Barklage v. Russell, 29 L. D. 401, p. 403.

Individual rights to mining claims can be acquired through the Land Office only upon the terms and conditions prescribed by the mining laws.

Lily Min. Co. v. Kellogg, 27 Utah 111, p. 115.

2. AUTHORITY OF SECRETARY OF THE INTERIOR.

See sec. 441, p. 829.

The Secretary of the Interior may, under his supervisory powers in disposing of the public domain, and on his own motion, correct errors that appear in the record and require a compliance with the law on the part of those seeking mining claims.

Parsons v. Ellis, L. D. 504, p. 507.
See Knight v. United States Land Assoc., 142 U. S. 161, p. 176.
South End Min. Co. v. Tinney, 22 Nev. 19, p. 52.

A change in the person holding the office of Secretary of the Interior can not affect a decision in an application for patent for a mining claim, and an application for a rehearing may be made to a successor where it could have been made to the Secretary making the original decision had he remained in office.

Harkrader v. Goldstein, 31 L. D. 87, p. 91.
See Hawley v. Diller, 178 U. S. 476.
Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, pp. 5, 11.

The supervisory powers of the Secretary of the Interior over mineral and other public lands do not authorize him to take action where adverse mineral claimants have had abundant opportunity to protect their rights under the statutes and regulations.

Gowdy v. Kismet Gold Min. Co., 25 L. D. 216, p. 220.

3. JURISDICTION TO ORDER HEARING.

The Land Department has jurisdiction to order a hearing to determine whether there has been due compliance with the mining law on proper protest.

Devereux v. Hunter, 11 L. D. 214, p. 215.

See Bodie Min. & Tunnel Co. v. Bechtel Consol. Min. Co., 1 L. D. 584.

Alice Placer Mine, In re, 4 L. D. 314.

Sweeney v. Wilson, 10 L. D. 157.

The Department may at any time before patent issues either on its own motion or on application made by others order a hearing for the purpose of determining the character of the land, and its authority in this respect is not controlled by any other tribunal whose judgment would be binding on the department.

Powell v. Ferguson, 23 L. D. 173, p. 174.

See Alice Placer Mine, In re, 4 L. D. 314.

The Land Office may direct a hearing to determine whether the publication of notice of application for a patent for a lode claim was made in the nearest newspaper.

Condon v. Mammoth Min. Co., 14 L. D. 138, p. 139.

The department has not intended by any of the decisions arising out of this controversy to adjudge any right in the applicant for a lode patent to receive patent if a placer location should be found to embrace nonplacer land.

Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401, p. 411.

4. MATTERS TO BE PASSED UPON—DUTIES AND POWERS.

For the purpose of issuing a patent there must be lodged somewhere the authority and duty to ascertain whether a claim contains valuable deposits and such authority is lodged in the Land Department, and if the question of the character of lands is properly presented at any time before patent it is the duty of the department to ascertain whether or not the land does contain valuable deposits within the meaning of this section.

Royal K Placer, In re, 13 L. D. 86, p. 89.

Before the issuance of a patent the officers of the Land Department are required to ascertain whether the necessary antecedent steps have been taken which justify its issuance, and they act upon the papers and proofs which are presented and base their conclusions thereon, and as it is their duty to investigate the facts it will be presumed by a court that such investigation was made.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 819.

Only mineral lands are subject to disposal under the mining laws, and when the question as to the character of land is raised it must be determined and is subject to such determination by the Land Department until patent issues.

American Smelting & Refining Co., In re, 39 L. D. 299, p. 301.

The practice of the Land Office has been not to inquire as to the status of an original or prior location when a discovery is made within the boundaries thereof, unless an application for a patent has been made for such original or prior location.

Branagan v. Dulaney, In re, 2 L. D. 744.

Until patent has issued the Land Department has jurisdiction to inquire and determine whether or not a claimant for lands has complied with the law, and if an entry has been made to inquire and determine whether or not the entry was properly allowed, and if found not to be properly allowed it is the duty of the department to vacate and cancel the entry.

Reed v. Bowron, 32 L. D. 383.

See Brown v. Hitchcock, 173 U. S. 473, p. 476.

Hawley v. Diller, 178 U. S. 476, pp. 488, 489, 490.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, pp. 308, 309.

Riverside Oil Co. v. Hitchcock, 190 U. S. 316, pp. 323, 324.

Harkrader v. Goldstein, 31 L. D. 87, pp. 91, 92.

It is the province of the Land Department, in an application for a patent for a mining claim, to pass upon the qualifications of the applicant, the acts done by him to secure title, and the nature of the land, and its judgment upon these matters is conclusive.

Steel v. Smelting Co., 106 U. S. 447, p. 451.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 603.

Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 874.

Roberts v. Southern Pacific R. Co., 186 Fed. 934, p. 941.

Spong, In re, 5 L. D. 193.

Northern Pacific R. Co. In re, 32 L. D. 342, p. 343.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 250.

Poire v. Wells, 6 Colo. 406, p. 412.

Gurney v. Brown, 32 Colo. 472, p. 480.

Talbott v. King, 6 Mont. 76, p. 105.

Board of Education v. Mansfield, 17 S. Dak. 72, p. 78.

See Davis v. Weibbold, 139 U. S. 507, p. 523.

Barden v. Northern Pacific R. Co., 154 U. S. 288, p. 320.

Pacific Coast Min. etc., Co. v. Spargo, 16 Fed. 348.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 940.

Carter v. Thompson, 65 Fed. 329.

Buena Vista Petroleum Co. v. Tulare, etc., Min. Co., 67 Fed. 226.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597.

New Dunderberg Min. Co. v. Old, 79 Fed. 598.

Durango Land & Coal Co. v. Evans, 80 Fed. 425.

The Land Department may determine for itself whether or not an action has been commenced by an adverse claimant within the statutory period.

Catron v. Lewisohn, 23 L. D. 20, p. 23.

See Downey v. Rogers, 2 L. D. 707.

It is the jurisdiction of the department to decide whether or not an adverse claim is filed within the period of publication, and, if so filed, whether or not the claimant has commenced suit within thirty days thereafter, while it is the jurisdiction of the court to determine the question of the right of possession between the adverse claimant and the applicant in the pending suit, and if the claim is not filed within the period or suit is not brought as required the jurisdiction of the court does not attach.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 185.

5. JUDICIAL CHARACTER OF PROCEEDINGS.

The Land Department, as a part of the administrative and executive branches of the Government, supervises all proceedings taken to obtain title to a mining claim; and as its officers are called upon to hear testimony as to matters presented for their consideration and to pass upon the same, they exercise a judicial function, and their judgment as to certain matters of fact is conclusive as against collateral attack.

Smelting Co. v. Kemp, 104 U. S. 636, p. 640.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 43.

See Wight v. Dubois, 21 Fed. 693.

Jeffords v. Hine, 2 Ariz. 162.

Talbott v. King, 6 Mont. 76.

Ferry v. Street, 4 Utah 521.

The proceedings of the General Land Office with reference to an application and the granting of a patent for a mining claim is judicial in its character and is in the nature of a proceeding in rem.

Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 873.

A decision of the Land Office awarding a patent to a claimant for mineral lands, in the absence of an adverse claim, is a judgment by default and is as conclusive as to the matters adjudicated as a judgment upon contested issues.

Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 873.

In the matter of issuing a patent to a mining claim the officers of the Land Department exercise a judicial function and their judgment as to matters of fact and within their exclusive jurisdiction is unassailable except in a direct proceeding.

Smelting Co. v. Kemp, 104 U. S. 636, p. 640.

Emmons v. United States, 175 Fed. 514, p. 515.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 6.

6. DETERMINATION OF DEPARTMENT CONCLUSIVE.

Where the Land Department under its duty has ascertained the existence of certain required facts, its determination is conclusive against any collateral attack.

Smelting Co. v. Kemp, 104 U. S. 636, p. 645.

McKnight v. El Paso Brick Co., 16 N. Mex. 721, p. 730.

See Knight v. United States Land Assn., 142 U. S. 161, p. 211.

El Paso Brick Co., In re, 37 L. D. 155.

Mantle v. Noyes, 5 Mont. 274, p. 293.

The land officers are charged with the duty of ascertaining whether lands are subject to be patented or not, and their determination is conclusive as against a person claiming the subsequent location of a mining claim on such lands.

Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348, p. 349.

Upon all questions of fact the decisions of department officers relating to mining claims are conclusive, and their decisions upon questions of law only can be reviewed in a proper case made in a direct proceeding for that purpose, and their decisions upon questions of law or fact are not subject to collateral attack.

Aurora Hill, etc., Min. Co. v. Eighty-five Min. Co., 34 Fed. 515, p. 518.

Concurring decisions of the local officers and the General Land Office on questions of fact relating to mineral applications will not be disturbed by the department unless against the weight of evidence.

Ferguson v. Belvoir, etc., Min. Co., 14 L. D. 43, p. 45.

See Creswell Min. Co. v. Johnson, 8 L. D. 440.

A determination on the part of the department as to the mineral character of land does not preclude it from making further investigation as the jurisdiction of the department continues until the issuance of the patent.

Searle Placer, In re, 11 L. D. 441, p. 442.

The decision of the Land Department as to whether certain land is swamp land, saline land, or mineral land, is conclusive, and is not open to relitigation in the courts except in cases of fraud.

Burfenning v. Chicago, etc., R. Co., 163 U. S. 321, p. 323.

Smelting Co. v. Kemp, 104 U. S. 636.

Steel v. Smelting Co., 106 U. S. 447.

Northern Pacific R. Co., In re, 32 L. D. 342, p. 343.

Jameson v. James, 155 Cal. 275, p. 278.

7. DEPARTMENT WITHOUT JURISDICTION.

The Land Department has no jurisdiction to determine or pass upon controversies between adverse claimants as to the right of possession of a mining claim or upon any

question as to the priority of such right, but it is the only tribunal having jurisdiction to pass upon the question whether the terms of the statute have been complied with, and it may require a claimant to make full compliance with the statute and to make new publication of notice, so that adverse claimants will have the right to appear and file a notice of his claim and commence proceedings in the proper court.

Bright v. Elkhorn Min. Co., 8 L. D. 122, p. 124.

The Land Department is without authority to strike from an entry the name of a joint applicant who, as shown by the record, has an interest in the claim, but has failed to prove his qualification otherwise, and thereby vest the full equitable and the foundation for a legal title in a person owning but a portion of the possessory right or interest in the claim.

Lackawanna Placer Claim, In re, 36 L. D. 36, p. 38.

See *Thomas v. Elling*, 25 L. D. 495, p. 497.

An executive officer has no authority to issue a patent for mineral lands entered by cash entry as agricultural lands.

United States v. Culver, 52 Fed. 81, p. 83.

8. TERMINATION OF JURISDICTION.

The issuance of a patent terminates the jurisdiction of the department over the land covered thereby, and the patent can thereafter be invalidated only by proceedings in the proper court.

Pacific Slope Lode, In re, 12 L. D. 686, p. 688.

Cameron Lode, In re, 13 L. D. 369, p. 370.

When the Government has issued and delivered a patent for a mining claim the control of the department ceases, and the title can then be impeached only by a bill in chancery.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 301.

Lightner Min. Co. v. Superior Court, etc., 14 Cal. App. 642, p. 648.

Where an inquiry discloses that a mining claim or a particular interest therein has been conveyed by patent, then the Land Department is without further jurisdiction.

South Star Lode, In re, 20 L. D. 204, p. 209.

The Land Office is bound to examine into the question of the evidence of the possessory title of an applicant for a mining patent, but after an entry has been made the department is prevented from recognizing or examining into the title of an assignee.

See *Whitaker v. Railroad Co.* (Sept., 1880).

Woodville, In re (June 8, 1882).

9. REJECTION OF APPLICATION—EFFECT AND POWER.

While the Land Department has the power to set aside a mining location and restore the land to the public domain, yet the mere rejection of an application for entry on the ground that the land was not placer mining ground, nor subject to entry as a placer mining claim does not have that effect, and the applicant may submit a second or amended application and offer further testimony as to his right to a patent.

Clipper Min. Co. v. Eli Min. Co., 194 U. S. 220, p. 223.

See *Clipper Min. Co. v. Eli Min., etc., Co.*, 33 L. D. 660, p. 666.

Clipper Min. Co. v. Eli Min., etc., Co., 29 Colo. 377.

Clipper Min. Co. v. Searl, 29 L. D. 137, p. 140.

Clipper Min. Co., In re, 22 L. D. 527.

The judgment of the Land Department rejecting an application for patent to a mining claim leaves the applicant as though no application had been made.

Beals v. Cone, 27 Colo. 473, p. 483.

Peoria & Colorado Min., etc., Co. v. Turner, 20 Colo. App. 474, p. 483.

When the department rejects an application for a patent it can go further and set aside the location, and it can by direct proceedings upon notice set it aside and restore the land to the public domain.

Clipper Min. Co. v. Ely Min., etc., Co., 34 L. D. 401, p. 409.

10. COURT DECISIONS BINDING ON DEPARTMENT.

The officers of the Government as to the issuance of a patent are governed by the judgment of the court where the conflicting claims are determined.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 585.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 693.

See Iron Silver Min. Co. v. Campbell, 135 U. S. 286.

Wright v. Town of Hartville, 13 Wyo. 497, p. 506.

Notwithstanding the judgment of a court on an adverse claim on the question of the right of possession, it still remains for the Land Department to pass upon the sufficiency of the proof and to ascertain the character of the land, and likewise determine whether the conditions of the law have been complied with in good faith; and as to all matters which by the statute are exclusively confided to the court the department exercises no power of investigation and determination, and the judgment roll proves the right of possession only.

Clipper Min. Co. v. Eli Min., etc., Co., 33 L. D. 660, p. 668.

See Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401.

11. AUTHORITY TO ISSUE OR QUALIFY PATENTS—INVALID PATENTS—CONCLUSIVENESS.

The land officers, who are merely agents of the law, have no authority to insert in the patent any other terms than those of conveyance, with recitals showing a compliance with the law and the conditions which it prescribes.

Deffeback v. Hawke, 115 U. S. 392, p. 406.

Davis v. Weibbold, 139 U. S. 507, p. 527.

Shaw v. Kellogg, 170 U. S. 312.

Roberts v. Southern Pacific R. Co., 186 Fed. 934, p. 945.

Spong, In re, 5 L. D. 193.

Townsite Clause, In re, 5 L. D. 256.

Northern Pacific R. Co. In re, 32 L. D. 342, p. 345.

Largey, In re, 17 C. L. O. 3, p. 4.

In an action at law parol evidence is admissible to show that officers of the Land Department had no authority to issue a patent where the land had been previously disposed of or reserved from sale, and in actions of ejectment the plaintiff must prevail on the strength of his own title.

Horsky v. Moran, 21 Mont. 345, p. 353.

See Smelting Co. v. Kemp, 104 U. S. 636, p. 644.

Steel v. Smelting Co., 106 U. S. 447, p. 453.

When the officers of the Land Department are invested with judicial authority to decide the facts upon which the title to a mining claim in controversy may be obtained the patent or certificate of entry affords evidence of such decision, and the courts will not review them, as they are conclusive of the legal title in all courts and in all forms of judicial proceedings.

McEvoy v. Hyman, 25 Fed. 539, p. 540.

When a patent is issued by the officers of the Land Department all reasonable presumptions are indulged in support of their action, and it is only when it is clear that some material error of law, imposition, or fraud has resulted in the issuance of a patent to one applicant when it should have been issued to another that the action of the officers of the Land Department can be called in question, and the patentee declared a trustee for the unsuccessful applicant.

Leonard v. Lennox, 181 Fed. 760, p. 762.

The Land Department, in cases of patents to preemptioners, homestead claimants, and other purchasers of the public lands has acted upon the theory that patents to lands not known to be mineral lands at the time the patent is issued carry the title to all mines subsequently discovered in such lands, notwithstanding the reservation from sale of mineral lands in the statute.

Cowell v. Lammers, 21 Fed. 200, p. 206.

C. APPLICATION FOR PATENT.

1. APPLICATION—FILING AND SHOWING.
2. QUALIFICATIONS OF APPLICANT.
3. DEATH OF APPLICANT—EFFECT ON ISSUANCE OF PATENT.
4. BY COOWNER OR JOINT OWNER.
5. FILING IN PROPER LAND OFFICE.
6. FORM AND SUFFICIENCY.
7. AFFIDAVIT AND OATH OF APPLICANT.
8. SURFACE INCIDENT TO LODE.
9. APPROPRIATION AND SEGREGATION.
10. ORDER OF TIME—PRIORITY—JUNIOR APPLICANT.
11. COMPLIANCE WITH REQUIREMENTS MUST BE SHOWN.
 - a. COMPLIANCE WITH CONDITIONS GENERALLY.
 - b. LOCATION A PREREQUISITE STEP.
 - c. DISCOVERY A PREREQUISITE.
 - d. POSSESSORY RIGHT ESSENTIAL.
 - e. FILING PLATS REQUIRED—PURPOSE.
 - f. ABSTRACT OF TITLE REQUIRED.
 - g. PAYMENT OF PRICE.
12. MINERAL CHARACTER OF LAND.
 - a. PROOF AS TO VALUE OF MINERALS.
 - b. VALUE TO SUPPORT DISCOVERY MAY JUSTIFY PATENT.
 - c. DETERMINATION AS TO MINERAL CHARACTER.
 - d. DUTY OF DEPARTMENT TO DETERMINE.
 - e. DETERMINATION CONCLUSIVE.
 - f. SUFFICIENCY AS BETWEEN CONTESTING CLAIMANTS.
 - g. BURDEN OF PROOF.
 - h. SURVEYOR'S RETURN AS TO MINERAL CHARACTER—
BURDEN OF PROOF.
 - i. BURDEN OF PROOF AFTER SURVEYOR'S RETURN.
 - j. PROOF OF MINERAL SPRINGS INSUFFICIENT.
13. DESCRIPTION OF CLAIM.
 - a. ACCURACY REQUIRED.
 - b. CONNECTION WITH SURVEY OR MONUMENTS.
 - c. REFERENCE TO NATURAL OBJECTS OR MONUMENTS.
 - d. MISTAKES AND INSUFFICIENT DESCRIPTION—EFFECT.
14. LINES AND BOUNDARIES—LOCATION AND EFFECT.
15. GROUP OF CLAIMS IN ONE APPLICATION.
16. NONCONTIGUOUS TRACTS NOT PATENTABLE.
17. RELINQUISHMENT OF PART OF CLAIM.

18. **CONFLICTING CLAIMS—EXCLUSION OF CONFLICTING AREAS—EFFECT.**
19. **SECOND INCLUSION OF LAND PROHIBITED.**
20. **RIGHT TO PATENT.**
21. **APPLICATION FOR PLACER CLAIM—PRACTICE.**
22. **APPLICATION FOR LODGE WITHIN PLACER CLAIM.**
23. **APPLICATION FOR CLAIM WITHIN TOWN SITE.**
24. **APPLICATION FOR MILL SITE.**
25. **APPLICATION FOR NONMETALLIFEROUS SUBSTANCES.**
26. **RIGHT OF APPLICANT TO CERTIFICATE OF PURCHASE.**
27. **APPLICANT ENTITLED TO PATENT—EQUITABLE OWNER.**
28. **REHEARING.**
29. **PROSECUTION OF APPLICATION.**
 - a. **DILIGENCE REQUIRED.**
 - b. **UNREASONABLE DELAY—EFFECT.**
 - c. **ENTRY COMPLETED WITHIN CALENDAR YEAR.**
 - d. **EXCUSE FOR DELAY.**

1. APPLICATION—FILING AND SHOWING.

This section requires an applicant for patent for a mining claim to file in the proper land office an application for patent under oath and for the period of publication requires him to file "his affidavit showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication."

Drescher, In re, 41 L. D. 614, p. 615.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 102.

An application for a mining claim must be made by the applicant in person where he resides in the land district at the time of making his application.

Drescher, In re, 41 L. D. 614, p. 615.

An application for patent must show that the land described was not only located for valuable mineral deposits, but that it is claimed for such deposits; and if it appears that the purpose of either the location or of the patent is to secure valuable water power or timber that the claimant is not entitled to under the mineral land laws, the patent can not be issued.

United States v. Lavenson, 206 Fed. 755, p. 763.

2. QUALIFICATIONS OF APPLICANT.

Persons authorized to locate mining claims may make application for patent to the same.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 463.

Lock Lode, In re, 6 L. D. 105.

A patent may be obtained for lands containing valuable deposits of mineral by any person, association, or corporation who has claimed and located a piece of land for such purpose and who has complied with the law, but there is no provision for obtaining patent to veins or lodes otherwise than in connection with the land in which they are situated.

Lellie Lode Min. Claim, In re, 31 L. D. 21, p. 24.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 147.

An applicant for a patent under this section must have the right to possession and must be a qualified locator.

Lee Doon v. Tesh, 68 Cal. 43, p. 45.

This section makes the only provision except the giving further notice, as required by section 2326, for the prosecution in the Land Department of proceedings for the acquisition of the legal title to mining claims, and clearly defines the persons who may avail themselves of the provisions of this section.

Golden Crown Lode, In re, 32 L. D. 217, p. 219.

Application for patent to land claimed and located for valuable mineral deposits may be filed in the proper land office only by the person, association, or authorized corporation who has claimed and located a piece of land for such purpose and complied with the terms of the statute, and when a mineral patent is sought by an association of two persons their authority for making application therefor is dependent upon the condition precedent, among others, that they or their grantors have claimed and located the land embraced in the patent proceedings; and in such case the right of possession, whether by location or purchase, must be in all the members of an association authorized to acquire the legal title.

Golden Crown Lode, In re, 32 L. D. 217, p. 219.

An applicant for a patent seeking to avail himself of special privileges conferred by the act of Congress should show by his application that he is within the class thus privileged.

Lee Doon v. Teah, 68 Cal. 43, p. 49.

The word "authorized" used in this section refers to the qualifications of an applicant to make an entry under the mineral laws.

Buena Vista Electric Light Co., In re, 18 C. L. O. 208.

A corporation may make application for a patent to a mining claim.

Holman v. Central Montana Mines Co., 34 L. D. 568, p. 571.

A person having no interest in a mining claim is not qualified to apply for a patent.

South Carolina Lode, In re, 29 L. D. 602, p. 604.

Golden Crown Lode, In re, 32 L. D. 217, p. 219.

Extra Lode Claim, In re, 34 L. D. 590, p. 591.

3. DEATH OF APPLICANT—EFFECT ON ISSUANCE OF PATENT.

Where application for patent for a mining claim is made by an administrator, who is in the exclusive possession of such claim for the heirs of the estate, the patents should be issued to the heirs of the deceased.

Wood, In re, 2 L. D. 762.

Where an applicant for a patent for a mining claim dies before its issuance a certificate may properly issue in the name of the heirs of such deceased applicant.

Tripp v. Dunphy, 28 L. D. 14, p. 17.

4. BY COOWNER OR JOINT OWNER.

Each member of an association of persons seeking the legal title to land under the mining laws must own an interest in the claim or in each claim of a group embraced in their joint application for a patent, and the Land Department is without power or authority to enlarge or extend this provision or to dispense with the strict requirements thereof.

Golden Crown Lode, In re, 32 L. D. 217, p. 219.

Where one of several joint owners of a mining claim upon a common understanding relocated the claim in his own name, and afterwards asserted title to the claim, the other joint owners are not estopped from claiming an interest in such claim because

they failed to file an adverse claim and made no protest to the application of such relocater for a certificate or patent.

Hunt v. Patchin, 35 Fed. 816, p. 820.

A suit may be instituted in a court of competent jurisdiction for the purpose of settling the question of joint ownership and the court may assume jurisdiction of the subject matter, though not expressly recognized by this section, and the Land Department may await the result of such suit before giving further consideration to a protest of a coowner.

Thomas v. Elling, 25 L. D. 495, p. 498.

Thomas v. Elling, 26 L. D. 220.

A person claiming an interest in a mining claim is charged with knowledge of the notice, which the mineral applicant is required to give by general publication and by posting notices upon the claim and of the notices required to be given by the Land Department; and on failure to file a contest the question then as to the character of the land is between the applicant and the Government, and the decision on that point is conclusive.

Northern Pacific R. Co. v. Cannon, 54 Fed. 252, p. 257.

5. FILING IN PROPER LAND OFFICE.

The proper land office in which to file an application for patent or an adverse claim is the land office having jurisdiction of the land in question at the time of filing.

Williams, In re, 16 C. L. O. 110.

The requirement that an application for patent under the mining laws shall be filed in the proper land office means that the application must be filed in the land office of the land district where the land applied for is situated, and local land officers can not allow entry in lands not in the district for which they are appointed.

Alaska Placer Claim, In re, 34 L. D. 40, p. 41.

Where application is made for patent for mineral lands lying partly within one land district and partly in another, an entry may be permitted as to that portion of the claim which lies in the land district in which the application is made, and the applicant may make supplemental mineral entries for the portion of the claim in the other district and to the proper officers, and thus obtain patent for his final claim, and proof of expenditure in labor and improvements made in one district should be accepted in the proceedings in the other district.

Alaska Placer Claim, In re, 34 L. D. 40, p. 41.

An application for a mineral patent received by a receiver acting in the absence of the register of the land office is valid and binding on third persons.

Dean Richmond Lode, In re, 1 L. D. 545, p. 547.

6. FORM AND SUFFICIENCY.

There is no particular form prescribed by law for an application for a patent, but it is sufficient if it comply with the provisions of this section.

DeWitt, In re, 9 C. L. O. 34, p. 35.

The required form of an application for a mineral patent is that the applicant is the owner of a vein or lode deposit bearing the mineral named, together with the surface ground, and the application must show or state the kind of mineral.

Houghton v. McDermott, 15 L. D. 509, p. 511.

An application for a patent for a mining location must fully describe the vein or lode including a statement as to the kind and character of mineral, the extent thereof, and whether ore has been extracted, and of what amount and value, and other facts supporting the allegation that the claim contains valuable mineral deposits.

East Tintic Consol. Min. Claim, In re, 40 L. D. 271, p. 273.

An applicant for a mineral patent must show compliance with the terms of the statute when he files his application for a patent, so that nothing further is required of him after the publication of notice.

Houghton v. McDermott, 15 L. D. 509, p. 510.

An application for a patent necessarily carries with it, if not in express terms, certainly an implied allegation, that the location upon which the application was based was made upon land open to location and therefore was the prior location.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 545.

Affirmed in Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 420, p. 421.

An application for a mineral entry should be rejected where it appears that no copy of the plat or notice of the application has been posted on the land or in the local office, and that notice had not been posted as required.

Eureka & Try Again Lode Claims, In re, 29 L. D. 158.

To entitle a person to a patent for mineral lands he must show a valid location under the mining laws, and an invalid location can not be recognized as the basis for patent; and if the applicant's location is challenged as invalid the matter must be investigated, and it is the duty of the Land Department to determine before issuance of patent whether the applicant is entitled thereto.

Bunker Hill, etc., Min. etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 148.

Rupp v. Healey, 38 L. D. 387, p. 393.

Hughes v. Ochsner, 27 L. D. 396.

Proceedings under application for a patent for a mining claim should not be declared invalid because of irregularity in the publication of notice, where such irregularity is due to the acts of the Government officers and not to the applicant himself, and where it appears that the rights of third persons have not been prejudiced by such irregularity.

Becker v. Sears, 1 L. D. 575.

An application for a mineral patent which has been rejected may, unless fatally defective, be made the instrument of renewed patent proceedings, but must be treated as refiled and as again taking effect as of the date formal application is made for republication of notice thereof.

Jaw Bone Lode v. Damon Placer, 34 L. D. 72, p. 76.

An application for a patent will not be dismissed because of an immaterial or a slight inaccuracy or mistake in the published notice of application, where the error is not the fault of the applicant, and where the rights of third persons are not prejudiced by the mistake.

Newport Lode, In re, 6 L. D. 546, p. 547.

See New York Lode & Mill Site Claim, In re, 5 L. D. 513.

Buena Vista Lode, In re, 6 L. D. 646.

Where the patent proceedings fail as to a particular tract or claim, and they are not renewed it can not be said there is a pending application for a patent from the time of such failure.

Stemmons v. Hess, 32 L. D. 220 p. 223.

See Fox v. Mutual Min., etc., Co., 31 L. D. 59, p. 62.

7. AFFIDAVIT AND OATH OF APPLICANT.

The affidavit required by a mineral claimant must be made by the claimant himself.

Rico Lode, In re, 8 L. D. 223.

Affidavits required by this section must be made before the proper officer in the land district in which the claim is situated.

Dodge, In re, 6 C. L. O. 122, p. 123.

The provision that the applicant for patent for a mining claim shall file an application, under oath, showing compliance with the mining laws, is mandatory.

North Clyde Quartz Min. Claim & Mill Site, In re, 35 L. D. 455.

Patent proceedings are a nullity where not based upon a duly verified application.

Pocatello Gold, etc., Min. Co., In re, 42 L. D. 550, p. 552.

See Crosby & Other Lode Min. Claims, In re, 35 L. D. 434.

Dresher, In re, 41 L. D. 614.

An application for patent for a mining claim shall be under oath, and the proof of posting of notice upon the claim must be by an affidavit of at least two persons that the patent has been duly posted.

Stock Oil Co., In re, 40 L. D. 198, p. 199.

When the original locator makes application for patent for a mining claim, he must make the affidavit required, but if he has assigned his interest and the application is by an assignee, then he must make the affidavit.

Kempton Mine, In re, 1 C. L. O. 178.

Under the provision requiring a claimant to file his affidavit a corporation patent applicant may file the affidavit of its duly authorized agent as its proper representative to act for that purpose.

Coalinga Hub Oil Co., In re, 40 L. D. 401, p. 405.

The word "valuable" though omitted from the usual form of affidavit may be implied, and that use of it only expresses what the law implies and does not weaken or qualify the affidavit.

Cook, In re, 33 L. D. 109, p. 110.

See Deffebach v. Hawke, 115 U. S. 392, p. 404.

Colorado Coal Co., v. United States, 123 U. S., 307, p. 328.

An attempt by a notary public to administer the required oath to an application for a mining claim over a telephone is a vain thing and without legal effect for any purpose under the mining law, and is not sufficient to support an adverse claim.

Mattes v. Treasury Tunnel Min., etc., Co., 33 L. D. 553, p. 557.

A defective affidavit in an application for patent for a mining claim may be amended or corrected in the absence of an adverse claim, and the application is otherwise regular.

Pinedo, In re, 8 C. L. O. 5.

A defective affidavit does not render the patent proceedings void.

El Paso Brick Co. v. McKnight, 233 U. S. 250, p. 258.

The regulations require an applicant, under this section, to present a sworn statement accompanying the field notes showing his possessory right to the premises therein described, by virtue of compliance on his part with the mining rules, regulations, and customs of the mining district, State, or Territory, in which the claim is located, as well as with the mining laws of Congress, and stating briefly the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.

Golden Crown Lode, In re, 32 L. D. 217, p. 218.

8. SURFACE INCIDENT TO LODE.

The surface ground is an incident to the vein or lode.

Branagan v. Dulaney, 2 L. D. 744, p. 750.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 116.

The surface right is simply an adjunct to a lode claim and can not extend beyond the point where the lode intersects the exterior line of a senior location.

Plevna Lode, In re, 11 L. D. 236, p. 237.

See *Engineer Min., etc., Co.*, 8 L. D. 361.

Consolidated Min. Co., In re, 11 L. D. 250.

No surface ground can be granted in connection with a lode or any portion thereof to which no title is shown.

Consolidated Bobtail Gold Min. Co., In re, 9 C. L. O. 113.

The location or surface lines of a mining claim are not in themselves any part of the claim or property for which patent is sought, but are only used to describe and define and limit property rights in the claim, and it is immaterial to the Government where the lines of a lode location have been placed so long as no property belonging to another is included, the claim to be patented is accurately described, and the surface lines do not embrace any larger area than the law permits.

Hidee Gold Min. Co., In re, 30 L. D. 420, p. 426.

See *Alice Lode Min. Claim, In re*, 30 L. D. 481, p. 482.

Where a patent has been issued for a lode claim of less extent than the law permits, additional surface ground to the original surface can not afterwards be granted, as such lode claim can not after patent be used as a basis of application for patent for additional surface ground.

Consolidated Bobtail Gold Min. Co., In re, 9 C. L. O., 113.

9. APPROPRIATION AND SEGREGATION.

An application for patent for a mining claim may be treated as prima-facie evidence of appropriation of the ground therein described, so as to preclude any other person from making application to enter the same ground, as the right of the first applicant can only be first contested by an adverse claim.

Gunnison Crystal Min. Co., In re, 2 L. D. 722, p. 723.

A mineral application properly filed and duly followed by notice thereof by publication and posting, as required by this section, is per se a segregation of the land covered thereby.

Gibson, In re, 21 L. D. 219.

10. ORDER OF TIME—PRIORITY—JUNIOR APPLICANT.

"First in time first in right" is the only rule of precedence, whether it results in placing one or the other party in the affirmative position of applicant, or in relegating him to the less enviable status of an adverse claimant upon whom is thrown the burden of taking the affirmative in the courts.

Orient & Occident, etc., Mines, In re, 7 C. L. O. 82.

Mountaineer Min. Co., In re, 7 C. L. O. 101.

Big Flat Gravel Min. Co., In re, 9 C. L. O. 52.

The first applicant for a mining claim in time is first in right is the rule of precedence, whether it places one or the other party in the affirmative position of applicant or relegates him to the status of an adverse claimant without regard to the time of presenting the survey.

Big Flat Gravel Min. Co. v. Big Flat Gold Min. Co., 1 L. D. 562, p. 563.

See *Ivanpah v. Lizzie Bullock Claims*, 7 C. L. O. 163.

Priority of application for mineral entries are measured from the date of the application, and an application duly presented at the proper local office operates to reserve the land covered thereby, though made in the absence of the officer, until final action thereon.

Rice, *In re*, 11 L. D. 213, p. 214.
See Griffin v. Pettigrew, 10 L. D. 510.

Priority of application and not priority of survey governs as to the description of the mining claim, but a survey must show all conflicts with any previous surveys; but the mere showing of conflict does not divest the applicant of any legal rights.

Nolan, *In re*, 9 C. L. O. 230.

It is not competent for a register and receiver to allow a junior application to a mining claim, and the statutory right to institute legal proceedings can not be denied a junior applicant upon the ground of the dereliction of the receiver and register.

Hall v. Street, 3 L. D. 40, p. 42.

A junior application for a mining claim should be treated as an adverse claim, and all proceedings stayed except the publication of notice of application, until the controversy is settled by a court of competent jurisdiction.

Hall v. Street, 3 L. D. 40, p. 41.

The department may authorize the renewal of patent proceedings following a default, under a formal application for patent already on file, but the application can not take effect as of the date originally filed, but must take effect from the date of its renewal.

Jaw Bone Lode v. Damon Placer, 34 L. D. 72, p. 76.
See Highland Marie & Manila Lode Min. Claims, *In re*, 31 L. D. 37, p. 39.
Stemmons v. Hess, 32 L. D. 220.

A deed to land embraced within a mineral application, which is placed in escrow and not delivered until after entry of such mineral application, will not defeat the right of the mineral applicant.

Brady v. Harris, 29 L. D. 89, p. 93.
See Brady v. Harris, 29 L. D. 426.

The General Land Office, in considering an application for a patent for a mining claim that has been rejected by the local office, is not required to call upon the local officers for the records of conflicting applications where such officers have reported that the ground applied for is covered by prior applications, and this statement is not specifically denied.

McConaghy, *In re*, 29 L. D. 226, p. 227.

11. COMPLIANCE WITH REQUIREMENTS MUST BE SHOWN.

a. COMPLIANCE WITH CONDITIONS GENERALLY.

By this section the applicant for a patent must show compliance with the following conditions:

1. Filing an application showing a compliance with the law, with a plat and field notes of his claim made by or under the direction of the surveyor general, and that the boundaries were distinctly marked by monuments on the ground.
2. A previous posting of a copy of the plat with notice of his intended application placed in a conspicuous position on the claim.
3. An affidavit of at least two persons that such notice was duly posted.
4. Filing a copy of the notice with his application.
5. The designation of a newspaper nearest to the claim in which notice may be given by the register.

6. Filing with his application, or within 60 days thereafter, a certificate of the United States surveyor general that \$500 worth of labor has been expended or improvements to that amount have been made upon the claim.

7. Filing a certificate of the United States surveyor general that the plat is correct, and with such further description, by reference to natural objects or permanent monuments, as shall identify the claim.

8. Furnishing an accurate description to be incorporated in the patent.

9. At the expiration of 60 days to file his affidavit showing that the plat and notice have been posted in a conspicuous position on the claim during the period of publication.

- Gwillim v. Donnellan, 115 U. S. 45, p. 48.
 Smelting Co. v. Kemp, 104 U. S. 636, pp. 655, 656.
 Chambers v. Harrington, 111 U. S. 350, p. 351.
 Richmond Min. Co. v. Rose, 114 U. S. 576, p. 581.
 Wolverton v. Nichols, 119 U. S. 485, p. 486.
 McKinley v. Wheeler, 130 U. S. 630, p. 634.
 Dahl v. Raunheim, 132 U. S. 260, p. 261.
 Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 297.
 Ducie v. Ford, 138 U. S. 587, p. 591.
 Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428, p. 431.
 Perego v. Dodge, 163 U. S. 160, p. 164.
 Black v. Elkhorn Min. Co., 163 U. S. 445, p. 448.
 Del Monte Min. Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 71.
 Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 575.
 El Paso Brick Co. v. McKnight, 233 U. S. 250, p. 256.
 New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 604.
 Erwin v. Perego, 93 Fed. 608, p. 609.
 Bunker Hill, etc., Min. Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 542.

Where, under the last clause of this section, third parties present evidence by affidavits to show that an applicant has failed to comply with the mining statutes, if the evidence is of such character as to entitle it to credit, and if the allegations are such as, if proven in regular proceedings, would show that the law has not been complied with, that patent under the law ought not to be issued, or that the Land Office has no jurisdiction to issue the patent, then a hearing should be had as between the Government and the applicant, as in case of agricultural entries.

- Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 593, p. 599.
 Bright v. Elkhorn Min. Co., 15 C. L. O. 277, p. 278.
 See Branagan v. Dulaney, 2 L. D. 744.
 McGarahan v. New Idria Min. Co., 3 L. D. 422.

An application for a patent, without the proof required under this section, has no standing and constitutes no bar to the reception of another application.

Dean Richmond Lode, In re, 1 L. D. 545, p. 547.

The applicant must show, under oath, compliance with the mining laws and the filing of a plat and field notes, and that the boundaries of the claim have been distinctly marked upon the ground, and the register shall then publish a notice of such application for a period of 60 days.

- Hoffman v. Venard, 14 L. D. 45.
 Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 575.
 Doe v. Waterloo Min. Co., 43 Fed. 219, p. 226.

Proof made on an application for patent for a mining claim is *ex parte*, and the proof that an applicant has complied with the law is of more importance than the time or order in which it is made.

Chambers v. Pitts, 3 C. L. O. 162.

In an application for a patent in the absence of an adverse claim or other showing, it will be presumed that all local laws and regulations have been complied with.

- Hughes v. Ochsner, 26 L. D. 540, p. 543.
 Hughes v. Ochsner, 27 L. D. 396, p. 397.

An application for patent for a mining claim should not be denied because of a lack of strict compliance with the statute or with the regulations, especially where such failure is on the part of the public officers, and the claimant himself has acted in good faith in the matter of posting notices, and in such case the entry may be submitted to the board of equitable adjudication.

- Mimbres Min. Co., In re, 8 L. D. 457, p. 460.
 See Bailey & Grand View Min., etc., Co., 3 L. D. 386.
 New York Lode & Mill Site, In re, 5 L. D. 513.
 Newport Lode, In re, 6 L. D. 546.
 Buena Vista Lode, In re, 6 L. D. 646.
 Cornell Lode, In re, 6 L. D. 717.
 Veta Grande Lode, In re, 6 L. D. 718.
 Rowena Lode, In re, 7 L. D. 477.
 Silver King Quartz Mine, In re, 11 L. D. 234.

Where there has been a failure to comply with the essential provisions of the statute, it is the duty of the Department to withhold a patent.

Wight v. Tabor, 2 L. D. 738, p. 743.

b. LOCATION A PREREQUISITE STEP.

There must be a surface location before a patent can be issued.

Campbell v. Ellet, 167 U. S. 116, p. 119.

The presumption is that mining locations have been made conformable to law, and that the land was in fact mineral in character; and while this is a rebuttable presumption, yet until overthrown by competent and sufficient evidence it fixes the burden of proof upon the defendant.

Walker v. Southern Pacific R. R. Co., 24 L. D. 172, p. 175.

See Sweeney v. Northern Pacific R. R. Co., 20 L. D. 394.

A mineral claimant must show a legal location, and to do this must show a discovery in compliance with law, which in the location of a placer claim of 160 acres means a discovery on each 20 acres included in the tract.

Rhodes v. Treas, 21 L. D. 502, p. 503.

See Ferrall v. Hoge, 18 L. D. 81.

Yard, In re, 38 L. D. 59.

c. DISCOVERY A PREREQUISITE.

See secs. 2319, p. 23; 2320, p. 64; 2322, p. 108; 2324, p. 181; 2330, p. 529.

Discovery is indispensable to the validity of a mining location, and necessarily must precede or be coincident with the perfection thereof, and the ultimate right to a patent must always rest upon the basis of a lawful location, and where the element of discovery is drawn in question so as to involve the right of possession as between rival claimants, the Land Department can not ignore an alleged absence of discovery by the applicant for patent in time to have enabled a court of competent jurisdiction in a suit by an adverse claimant to determine the respective rights of the parties.

Rupp v. Healey, 38 L. D. 387, p. 392.

To constitute a valid discovery upon a claim for which patent is sought, there must be actually and physically exposed within the limits thereof a vein or lode of mineral-bearing rock in place, possessing in and of itself a present or prospective value for mining purposes, and these facts must be clearly made to appear before a patent can issue.

East Tintic Consol. Min. Claim, In re, 40 L. D. 271, p. 273.

While a discovery of a vein of mineral ore and the performance of certain other statutory requirements is necessary to a valid location, yet the issuance of a certificate of location is presumptive evidence of such discovery, and that the locator has com-

plied with the law in other respects, and after the lapse of time every reasonable presumption will be indulged in favor of the integrity of the location.

Cheesman v. Shreeve, 40 Fed. 787, p. 791.

Cheesman v. Hart, 42 Fed. 98, p. 102.

After the discovery and location of a mining claim the Government does not inquire into the value of the mineral deposit contained in such claim, save in a controversy between mineral and agricultural claimants.

Tam v. Story, 21 L. D. 440, p. 442.

See *Hughes v. Ochsner*, 26 L. D. 540, p. 543.

Generally discovery, marking on the ground, posting and recording notice, and compliance with the laws are essential elements in the initiation of rights under a mining claim and constitute the foundation upon which the right of obtaining the legal title is predicated.

Yard, In re, 38 L. D. 59, p. 66.

On a protest alleging nondiscovery of mineral within the claim applied for a rehearing should be granted, though the report of the deputy mineral surveyor shows the existence of ore in streaks and kidneys in various parts of the claim.

Waterloo Min. Co. v. Doe, 17 L. D. 111, p. 114.

Rupp. v. Healey, 38 L. D. 387, p. 392.

Proof that a mineral-bearing lode or vein was discovered, and that such vein or lode, as the applicant has ascertained, from personal observation, extends in its onward course or strike into the ground claimed in the application, and the general direction of such vein or lode is along the center line of said location, as shown by the official plat now on file, is insufficient to prove a discovery within the ground claimed of a mineral-bearing vein or lode.

Silver Jennie Lode, In re, 7 L. D. 6.

d. POSSESSORY RIGHT ESSENTIAL.

Proof of possession of a mining claim under a valid location, showing a sufficient marking of the boundaries upon the surface of the ground, with a prior discovery of a vein or lode of quartz or rock in place bearing mineral, makes a prima facie case which can only be defeated by proof of subsequent abandonment or forfeiture, or other prior right or title.

Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 300.

An application for a patent must be denied in the absence of a clear showing of a possessory right.

Montana Co., In re, 6 L. D. 261.

Northwestern Lode & Mill Site, In re, 8 L. D. 437, p. 438.

Sold Again Fraction Min. Lode, In re, 20 L. D. 58, p. 59.

Montana Co., In re, 14 C. L. O. 223.

This section does not expressly require a showing of complete title at the time of filing application for patent, but only those who assert the full possessory right for themselves, or for themselves and their cotenants, can avail themselves of the authority given by this section, and the section will not be construed so as to defeat a claim entitled to equitable consideration.

Ritter, In re, 37 L. D. 715, p. 716.

Strict compliance with the provisions of this section is required, and a possessory right must be shown, so that an adverse claimant, if he chooses to contest the application, may, in case he prevails, be entitled to a patent and may not be required to litigate the question of the right of possession with some third person claiming ownership, or by failing to file his adverse claim and contest the right be deprived of his claim.

Lockawanna Placer Claim, In re, 36 L. D. 36, p. 38.

Under this section an applicant for a patent claiming under a mining location is not required to show actual possession of the claim in order to entitle him to a patent therefor.

Burke v. McDonald, 2 Idaho 310, p. 325.

When an applicant for patent for a lode claim is met with an adverse claim, he may, to avoid a legal conflict, dismiss his application for a patent and rely on his title by possession given him by the local laws and customs, or, if the adverse is for a part only of the claim, he may elect to take patent for the part not in controversy and may withdraw from his application so much of his original claim as is in controversy.

Branagan v. Dulaney, 2 L. D. 744.

The requirement that a mining location must be distinctly marked on the ground, so that its boundaries can be readily traced, relates to the location of the claim and contemplates its definition and identification on the ground during the period in which it is held under a possessory title only, but the precise manner in which it shall be marked is not specified, although the result must be that its boundaries can be readily traced.

Sinnott v. Jewett, 33 L. D. 91, p. 96.

The location on a vein must be made by taking up "a piece of land" to include it, and no other means are provided; and it is only upon condition of complying with the law that the locator becomes entitled to anything, and in no case is a location complete until the surface claim is defined.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 458.

Mining locations or entries under the public land laws made upon lands not at the time regularly subject thereto may nevertheless, if maintained in good faith and the land thereafter becomes subject to such location or entry, be permitted to remain intact as having attached on such date, in the absence of an adverse claim.

Adams v. Polglase, 33 L. D. 30, p. 31.

See Dobbs Placer Mine, In re, 1 L. D. 565, p. 568.

Gunnison Crystal Min. Co., In re, 2 L. D. 722, pp. 724-725.

Meyer v. Hyman, 7 L. D. 336.

Moss Rose Lode, In re, 11 L. D. 120.

Colomokas Gold Min. Co., In re, 28 L. D. 172, p. 174.

Rob Roy Lode, In re, 1 Brainard's Leg. Prec., 173.

A mining location, embracing a prior valid and subsisting location, is not ipso facto void and ineffectual, and if unopposed may properly thereafter become the subject of mineral patent, and a valid and subsisting location will, in no case, avail to defeat a junior location as to which patent proceedings are regularly prosecuted, except upon the invocation of judicial intervention, and equally a placer location, notwithstanding a favorable judgment, will not avail to defeat a lode location within the placer limits, if such limits be thereafter found by the Land Department to embrace a tract which is not patentably placer in character.

Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401, p. 408.

The title to a vein or lode depends upon the right of the occupancy or the ownership of its apex; this right may be acquired by a valid location and continued maintenance of the claim or by patent from the United States for the land.

Gwillim v. Donnellan, 115 U. S. 45, p. 48.

There can be no color of title in an occupant where he does not hold or claim under any instrument, proceeding, or law purporting to transfer the title or to give him the right of possession.

Riley, In re, 33 L. D. 68, p. 70.

See Deffebach v. Hawke, 115 U. S. 392, p. 407.

An action may be brought under this section and under section 1900 of the general statute of Nevada to determine the right of possession to a mining claim.

Nesbitt v. De Lamar's Gold Min. Co., 24 Nev. 273, p. 280.

A peaceable adverse entry, coupled with the right to hold the possession of a relocated mining claim thereby acquired, operates as an ouster of the relocater by breaking the continuity of his holding and deprives him of the title he might have obtained if he had kept it for the requisite length of time.

Belk v. Meagher, 104 U. S. 279, p. 287.

Malone v. Jackson, 137 Fed. 878, p. 881.

See Ware v. White, 81 Ark. 220, p. 228.

C. FILING PLATS REQUIRED—PURPOSE.

The purpose of the requirements of plats is to inform the Land Department, as well as conflicting locators or protestants, of all the material facts concerning the claim which can be shown by plat and field notes, and it must show all conflicting locations or claims, patented or unpatented, and each location must be distinguished, as the mining claim must be located on the public domain, and the survey must identify each location, and the applicant must show that the annual expenditure has been made on each.

Mackie, In re, 5 L. D. 199, p. 200.

Buena Vista Lode, In re, 6 L. D. 646, p. 648.

See Argillite Ornamental Stone Co., In re, 29 L. D. 585, p. 586.

This and the succeeding section prescribe the manner of procedure for obtaining a mineral patent and require that the applicant shall post a copy of the plat, with the notice of his application for patent, in a conspicuous place on the land embraced in such plat, and on making due proof of the posting and upon the filing of the application, plat, and proof of notice, the register shall give due publication for 60 days, and upon the expiration of the time, if no adverse claim is filed, the applicant, upon due proof as to expenditures and payment, is entitled to a patent.

Doe v. Waterloo Min. Co., 43 Fed. 219, p. 226.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 208.

Mackie, In re, 5 L. D. 199, p. 200.

Tennessee Lode, In re, 7 L. D. 392, p. 393.

Rowena Lode, In re, 7 L. D. 477.

Pike's Peak Lode, In re, 10 L. D. 200, p. 205

Woods v. Holden, 26 L. D. 198, p. 202.

Campbell, In re, 4 C. L. O. 102, p. 103.

Lewis (A), In re, 4 C. L. O. 114.

Lewis (B), In re, 4 C. L. O. 114, p. 115.

Jacobs, In re, 12 C. L. O. 158.

Largey, In re, 17 C. L. O. 3, p. 4.

See Senator Mill Site, In re, 7 L. D. 475.

The only true and correct foundation for an applicant for a patent to a lode claim is the approved field notes and plat prepared by the deputy surveyor, and the published notice must be in strict conformity with this foundation of the application for a patent.

Hoffman v. Venard, 14 L. D. 45, p. 46.

Application for a patent for a mining claim must be accompanied by proof that the plat and notice had been posted upon the claim, as required by this section, and an application without such proof has no standing and is no bar to the reception of another application.

De Long v. Hine, 9 C. L. O., 114.

When proceedings for the acquisition of a patent are initiated, a plat and field notes of survey of the mining claim must accompany the application, and in this the boun-

daries are to be accurately shown, the claim distinctly marked by monuments on the ground, and the plat duly authenticated.

Sinnott v. Jewett, 33 L. D. 91, p. 96.

The plat must show that the end lines of each location are parallel in order that the patentee may have the right to follow a vein outside of the bounds of his location.

Mackie, In re, 5 L. D. 199, p. 200.

Iron Silver Min. Co. v. Elgin Min., etc., Co., 118 U. S. 196.

An application for patent for a mining claim, accompanied by proper proof of posting the plat and notice on the claim, should have precedence over a prior application not accompanied by any proof of posting the plat and notice; and the later applicant, under such circumstances, should not be given the status of an adverse claimant and be required to bring suit to establish his claim.

De Long v. Hine, 9 C. L. O., 114.

The plat and field notes of the mining claim applied for shall be made by or under the direction of the United States surveyor general.

Golden Empire Min. Co., In re, 36 L. D. 561, p. 563.

The platting of a claim, as required of an applicant for patent for a mining claim, is no part of the survey, but shows only what the surveyor has done, and is in fact office work, the expense of which the applicant may be required to make a deposit.

Foote, In re, 2 L. D. 773.

The requirement of the official plat and field notes of survey is not in conflict with other sections requiring the applicant to designate accurately the land applied for.

Khern, In re, 6 L. D. 580.

When the title to a mining claim has passed out of the United States, an applicant for patent may not be required to perform all the acts specified in this section, but he should perform such as could and would be of any avail, among these a survey made of the claim under the directions of the surveyor general.

Meyendorf v. Frohner, 3 Mont. 282, p. 323.

f. ABSTRACT OF TITLE REQUIRED.

An applicant for a patent to a mining claim is not required to file an abstract of title, but this requirement is made by the regulations of the Land Department, and therefore is not an objection upon which third persons can be heard under this section.

Bradstreet v. Rehm, 21 L. D. 30, p. 33.

Where an abstract shows absolute title in the applicant, and there is no suit pending, it will be assumed that the applicant has possession of the property and has maintained it from the time of location to the time of application, and the entry should be permitted.

White Extension West Lode, In re, 22 L. D. 677, p. 678.

See *Dolles v. Hamberg Consol. Mines Co.*, 23 L. D. 267.

Where an applicant for a patent to a mining claim is made as sole locator, and where he does not furnish an abstract of title, his affidavit should state that he has disposed of no interest in the land located.

Extra Lode Claim, In re, 34 L. D. 590, p. 592.

The failure of an adverse mineral claimant to file an abstract can only be treated as an irregularity and not as a defect that will defeat an adverse claim, and the department in such case has the power to avoid an act of injustice by suspending the rule.

Hawkeye Placer v. Gray Eagle Placer, 15 L. D. 45, p. 47.

See *Knight v. United States Land Association*, 142, U. S. 161.

An applicant for a patent for a mining claim, who claims title through deed signed by an executor, must file a certified copy of the letters testamentary with a copy of the will attached.

North-East Extension of the Yosemite Mine, In re, 3 C. L. O. 18.

An abstract of title filed by a mineral applicant pursuant to the regulations of the department, under this section, is insufficient where a sheriff's deed is relied upon and the decree under which the sale was made does not direct the sale of the property in question.

Bradstreet v. Rehm, 21 L. D. 544.

G. PAYMENT OF PRICE.

A locator acquires a right to a patent on compliance with the mining laws and the payment of the price, and the right of action passes at that time, though the patent is issued at a later date.

El Paso Brick Co. v. McKnight, 233 U. S. 250, p. 257.

Alta Min., etc., Co. v. Benson Min., etc., Co., 2 Ariz. 362, p. 369.

See Deffebach v. Hawke, 115 U. S. 392, p. 405.

The payment provided for in this section is one of the requirements to be complied with before patent can be obtained.

Ferguson v. Belvoir, etc., Min. Co., 14 L. D. 43, p. 44.

12. MINERAL CHARACTER OF LAND.

a. PROOF AS TO VALUE OF MINERALS.

The proof must show that land embraced in a mineral application contains mineral in paying quantities.

Berry v. Central Pacific R. Co., 15 L. D. 463, p. 464.

Royal K Placer, In re, 13 L. D. 86.

The requirements of the statute have been met where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

Castle v. Womble, 19 L. D. 455, p. 457.

Goldstein v. Juneau Townsite, 23 L. D. 417, p. 420.

Proof of the mineral character of the land must be specific, and must show actual production of mineral and proof that neighboring or adjoining lands are mineral in character, or that in the lands in question may subsequently be found to be mineral is not sufficient.

Johns v. Marsh, 15 L. D. 196, p. 198.

See Dughi v. Harkins, 2 L. D. 721.

Commissioners of King County v. Alexander, 5 L. D. 126.

Savage v. Boyton, 12 L. D. 612.

Active mining operations are not required in order to establish the mineral character of land, where the land is at the time involved in litigation.

Aspen Consol. Min. Co. v. Williams, 23 L. D. 34, p. 48.

Proof of the location of a mining claim, in conformity with the statutes and the local rules and regulations of the mining district, raises a presumption that the land is mineral in character, as a discovery of mineral is required before a claim can be legally located, and the department will presume that all the requirements of the law were complied with in the making of such a location.

Sweeney v. Northern Pacific R. Co., 20 L. D. 394, p. 395.

See Northern Pacific R. Co. v. Marshall, 17 L. D. 545.

Washington v. McBride, 18 L. D. 199.

Lands can not be patented as a mining claim where it is not shown to contain mineral deposits of sufficient extent and value to render them subject to entry under the mining laws.

Grand Canyon R. Co. v. Cameron, 36 L. D. 66, p. 70.

Where it is affirmatively shown in affidavits filed by the applicants for a patent that silver ore assaying from 3 to 12 ounces per ton has been found in the discovery shaft of a claim, this evidence will be held sufficient to establish the mineral character of the land, in the absence of any adverse claim or any claim by a party asserting the land to be of a different character.

Hughes v. Ochener, 26 L. D. 540, p. 543.

Hughes v. Ochener, 27 L. D. 396, p. 397.

Where lands are in truth mineral the fact that they had been previously borne on the office records as agricultural lands is immaterial in an application for a patent, as mineral lands and a mineral entry is not invalid because the land at the time was covered by a homestead entry.

Dobbs Placer Mine, In re, 1 L. D. 565, p. 568.

Scogin v. Culver, 7 C. L. O. 23.

Where the land is in fact mineral and known to be so at the time the grant to the State takes effect, it is immaterial to the State whether the entryman complied with the mining laws of the United States or not, as this question is one solely between the mineral claimant and the United States.

Montana v. Silver Star Min. Co., 23 L. D. 313, p. 316.

Proof of the nonmineral character of land will bar the issuance of a patent to an alleged mining location.

Smoke House Lode, In re, 4 L. D. 555, p. 556.

An application for a patent for a mining location on lands that are prima facie agricultural can not be granted until after a hearing determining its mineral character.

Hooper v. Ferguson, 2 L. D. 712, p. 713.

Elda Min., etc., Co., In re, 29 L.D. 279, p. 281.

Nothing short of known mines on lands capable, under ordinary circumstances, of being worked at a profit, as compared with any gain or benefit that may be derived therefrom when entered under the homestead law, will prevent a homestead entry.

Winters v. Bliss, 14 L. D. 59, p. 61.

See United States v. Reed, 28 Fed. 482.

An erroneous allowance of a mineral application does not operate to place the burden of proof upon a homestead claimant.

Elda Min., etc., Co., In re, 29 L. D. 279, p. 280.

b. VALUE TO SUPPORT DISCOVERY MAY JUSTIFY PATENT.

The location that a court will recognize as valid may be predicated upon a discovery of mineral which falls short of establishing the mineral character of the land under the settled and approved rule of determination, but to prevail eventually the location must be shown to embrace mineral land of corresponding character, lode or placer, which may become the subject of a mineral patent.

Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401, p. 408.

To constitute discovery it is necessary that mineral-bearing rock in place be found, and under such circumstances and of such a character that a reasonably prudent man, not necessarily a skilled miner, would be justified in spending time and money developing it with the reasonable expectation of finding ore in paying quantities, and this rule applies to an applicant for patent, and implies not only that the condi-

tions warrant a reasonably prudent man in so proceeding with such reasonable expectation, but that the applicant for patent has that expectation.

United States v. Lavenson, 206 Fed. 755, p. 763.

To sustain an application for mineral patent as against a person alleging the grant to be nonmineral, it must appear that mineral exists in the land in quantity and of value sufficient to subject it to disposal under the mining law; that is, the land applied for must be shown to contain valuable deposits of mineral, which means more than a mere discovery that might be sufficient to support a location.

Brophy v. O'Hare, 34 L. D. 596, p. 598.

C. DETERMINATION AS TO MINERAL CHARACTER.

Where the character of land is involved in a controversy between conflicting claimants, and the determination of that question fixes the right to purchase such land, the question can only be decided by the Land Department, as the courts are not clothed with power to decide the question.

Snyder v. Waller, 25 L. D. 7.

Reins v. Raunheim, 28 L. D. 528, p. 529.

Wright v. Town of Hartville, 13 Wyo. 497, p. 507.

Local officers may, after proper notice, make a personal inspection of the land in controversy and use the information thus obtained in determining the mineral or nonmineral character of the land.

Majors v. Rinda, 24 L. D. 277, p. 279.

Proof of the mineral character of the land can not be waived, and the mineral character can not be assumed, because the mineral character of land in the same section involved in a different proceeding had been determined, but the application will not be dismissed, and the applicant should be permitted to make the supplementary proof or give the proper notice.

Boulder & Buffalo Min. Co., In re, 7 L. D. 54.

Townsite of Silver Cliff v. State of Colo., Copp's Min. Lands 261.

d. DUTY OF DEPARTMENT TO DETERMINE.

The decision of the Land Department in reference to the existence or nonexistence of salines or mines is conclusive upon the courts.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 250.

See Smelting Co. v. Kemp, 104 U. S. 636.

Steele v. Smelting Co., 106 U. S. 447.

Whenever mines are found in lands belonging to the United States, they may be claimed and worked, provided existing rights of others, from prior location, are not interfered with, and whether these rights are thus interfered with, which should preclude the location of the miner and the issue of a patent to him or his successor in interest, is, when not subjected under the law of Congress to local tribunals, a matter properly cognizable by the Land Department when application is made to it for patent; and the inquiry thus presented must necessarily involve the determination of the mineral character of the land.

Steele v. Smelting Co., 106 U. S. 447, p. 450.

Hawke v. Deffeback, 4 Dak. 20, p. 35.

Where the character of the claim has not been properly ascertained, it is the duty of the department to determine such question.

Waterloo Min. Co. v. Doe, 17 L. D. 111, p. 114.

Royal K Placer, In re, 13 L. D. 86.

Where in an application for a mineral patent the Land Department is advised of the nonmineral character of the land while the application is pending, the department is

under obligation to inquire into the truth of such allegation before issuing the patent; and if it issues the patent without doing so, it is then under obligation to ask a court to set aside the patent issued by reason of its neglect, and where such action is necessary to protect the title of third parties who have no remedy except through such intervention.

Mountain Maid, In re, 5 L. D. 23, p. 29.

This is a statute of repose only so far as to bar the assertion of adverse mining claims not filed within the period of publication, but it does not relieve the Land Department from ascertaining whether the land sought to be patented is mineral in character and therefore subject to disposition under the mining laws.

Ferrell v. Hoge, 29 L. D. 12, p. 13.

e. DETERMINATION CONCLUSIVE.

The finding that land is nonmineral in character is final and conclusive upon the parties up to the date of the trial only and has no relation to the discovery of mineral thereafter and prior to the time the Government parts with its title.

Spratt v. Edwards, 15 L. D. 290, p. 292.

Jones v. Driver, 15 L. D. 514, p. 518.

Where the question of the mineral character of land is settled in one proceeding between the same parties, the same question in a subsequent proceeding covering the same period will not be permitted.

Stinchfield v. Pierce, 19 L. D. 12, p. 14.

Dargin v. Koch, 20 L. D. 384, p. 387.

McCharles v. Roberts, 20 L. D. 564, p. 566.

Searle Placer, In re, 11 L. D. 441.

See Caldwell v. Gold Bar Min. Co., 24 L. D. 258, p. 263.

Mackall v. Goodsell, 24 L. D. 553.

Leach v. Potter, 24 L. D. 573.

Town of Aldridge v. Craig, 25 L. D. 505.

Wilson v. Davis, 25 L. D. 514.

Coleman v. McKenzie, 28 L. D. 348, p. 353.

Where parties attack a mineral location on land that has once been judged to be mineral in character, they must allege and prove abandonment or forfeiture of the mining claim, and the testimony must be clear and unmistakable.

Caldwell v. Gold Bar Min. Co., 24 L. D. 258, p. 263.

See McCharles v. Roberts, 20 L. D. 564.

After final judgment declaring land to be mineral in character, a simple allegation that the land is as a present fact more valuable for agriculture is not sufficient upon which to order a hearing, and require the mineral claimant to again adjudicate the question.

Caldwell v. Gold Bar Min. Co., 24 L. D. 258, p. 263.

See McCharles v. Roberts, 20 L. D. 564.

Where the question is as to whether the land in controversy is more valuable for agriculture or mining a former judgment is only binding up to the rendition of the final judgment, and in subsequent proceedings it may be shown that subsequent exploitation has changed the character of the land, but the burden of proof rests upon the party attacking the entry.

McCharles v. Roberts, 20 L. D. 564, p. 567.

f. SUFFICIENCY AS BETWEEN CONTESTING CLAIMANTS.

Proof of the existence of small quantities of gold not sufficient in quantity to warrant miners in working the land will not prevent a homestead claimant from taking it as agricultural land.

Etling v. Potter, 17 L. D. 424, p. 426.

See United States v. Reed, 28 Fed. 482.

In a contest between a settler under the preemption laws and a mineral claimant it is sufficient to show that the mineral character of the land was known to others, and that the ore was then exposed in such manner and to such an extent that a person of ordinary intelligence who had been upon the tract could not be ignorant of the existence of vast quantities upon that portion of the land held for disposal under the mining laws.

Tinkham v. McCaffray, 13 L. D. 517, p. 518.
See *Harnish v. Wallace*, 13 L. D. 108.

Where the preponderance of the evidence shows that it would not pay to mine the lodes under a mineral location, and that the land is more valuable for agricultural purposes than for mining purposes, a mineral application will not be allowed.

Adams v. Simmons, 16 L. D. 181, p. 182.

Where an application for patent for a mining claim is protested on the ground that the claim embraced by the application was not shown to contain a valuable deposit of mineral, the applicant is not required to show that the claim does contain a valuable mineral deposit, as that is no part of his defense.

Tam v. Story, 21 L. D. 440, p. 441.

Where the mineral character of the land is such as to exempt it from the operation of the grant to a railroad company, it is sufficient for the purpose of placing the burden of proof upon those attacking it on the ground that it is agricultural.

Caldwell v. Gold Bar Min. Co., 24 L. D. 258, p. 263.

The failure of a homestead applicant to appeal in case of a mistake of a local office in refusing to allow an application upon the ground that the land was classed as coal or mineral lands, and not subject to homestead entry, will not bar an applicant from the right to assert priority of claim.

Avery v. Smith, 12 L. D. 550, p. 552.

G. BURDEN OF PROOF.

The burden of proof is on a protestant to show the land in controversy does not contain mineral, and that it is not mineral land within the meaning of the statute.

Ferrell v. Hagg, 27 L. D. 129, p. 131.

The burden of proof is on a contestant to sustain by a preponderance of the testimony either a charge of abandonment of an existing mining claim or that the entry was made for speculative purposes.

Thorne v. Kinsey, 18 L. D. 416, p. 417.

The burden of proof is upon a mineral applicant to show the mineral quality of land within the grant of school lands to a State.

Washington v. McBride, 18 L. D. 199.

In a contest between agricultural and mineral claimants on proof that the land had been once mined over, the mineral exhausted, and the land long since abandoned, the burden of proof shifts to the mineral claimant to show that at the time of the hearing the land was more valuable for mineral than for agricultural purposes by the actual production of mineral as a present fact.

Peirano v. Penedola, 10 L. D. 536.

Berry v. Central Pacific R. Co., 15 L. D. 463.

Thomas v. Thomasson, 16 L. D. 52, p. 54.

The burden is on an agricultural entryman or contestant to clear the land of its mineral character, imposed upon it by decision of the Land Office.

Dornen v. Vaughn, 16 L. D. 8, p. 10.

Thomas v. Thomasson, 16 L. D. 52, p. 53.

Where the mineral character of a claim is founded upon the exploration of one portion thereof the burden of proof thereby cast upon one attacking the mineral location

is sustained by exploration upon such portion sufficient to demonstrate its nonmineral character, and thereby overcome its alleged prior exploration and discovery, as that which gives its mineral character to the entire claim is shown to be unfounded and destroyed, and its mineral character removed.

Washington v. McBride, 25 L. D. 167, p. 182.

h. SURVEYOR'S RETURN AS TO MINERAL CHARACTER—BURDEN OF PROOF.

When final proof, including a proper showing as to the mineral character of land, has been regularly submitted to the local officers, and an entry allowed and certificate issued, the character of the land is established by a higher quality of evidence than that afforded by a surveyor's return, and will cast the burden to show otherwise upon a party attacking the entry.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 13.

Quigley v. California, 24 L. D. 507, p. 508.

The return of the surveyor general in connection with the survey of public land as to the mineral character of land is sufficient evidence of its character to cast the burden of proving the contrary upon one who alleges that the land is of a different character, but this presumption is only slight and may be readily overcome by evidence of a higher character.

Magruder v. Oregon & California R. Co., 28 L. D. 174, p. 177.

Winscott v. Northern Pacific R. Co., 17 L. D. 274.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1.

See Barden v. Northern Pacific R. Co., 154 U. S. 288, p. 320.

Tulare Oil & Min. Co. v. Southern Pac. R. Co., 29 L. D. 269, p. 271.

The return of the surveyor general as to the character of land constitutes but a small element of consideration when the question as to the true character of the land is at issue.

Kinkade v. California, 39 L. D. 491, p. 494.

Where land has been returned as agricultural, the burden of proof is on the party asserting its mineral character in support of a placer location.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 2.

But where a mineral entry has been permitted, upon proof of the mineral character of the land, the burden of proof is then upon the party asserting its nonmineral character, though it was originally returned as agricultural, as the allowance of such an entry was an adjudication by the local officers that the land was mineral in character, and this was sufficient to overcome the original return of the surveyor general.

Johns v. Marsh, 15 L. D. 196, p. 200.

Where a mineral location has been made on land returned as agricultural, the return of the surveyor general is ipso facto overcome, and the burden of proof shifts to the party attacking the mineral entry.

Northern Pacific R. Co. v. Marshall, 17 L. D. 545.

Washington v. McBride, 18 L. D. 199, p. 202.

Southern Pacific R. Co. v. Griffin, 20 L. D. 485, p. 486.

Rhodes v. Treas., 21 L. D. 502, p. 503.

See Goldstein v. Juneau Townsite, 23 L. D. 417, p. 419.

Washington v. McBride, 25 L. D. 167, p. 182.

Magruder v. Oregon, etc., R. Co., 28 L. D. 174, p. 177.

A mineral claimant has the burden of proving that lands returned by the surveyor general as agricultural lands are in fact mineral.

Winters v. Bliss, 14 L. D. 59, p. 61.

See Magalia Gold Min. Co. v. Ferguson, 3 L. D. 234.

Savage v. Boynton, 12 L. D. 612.

Dobler v. Northern Pacific R. Co., 17 L. D. 103, p. 104.

Where a mineral application is made for lands returned as agricultural the burden is upon the contestant to show their mineral character, and this is not done by proof that adjoining lands are mineral in character or that the land in dispute may subsequently discover minerals, where as a present fact they are not valuable mineral lands.

Winters v. Bliss, 14 L. D. 59, p. 62.
 See *Hooper v. Ferguson*, 2 L. D. 712.
Roberts v. Jepsom, 4 L. D. 60.

i. BURDEN OF PROOF AFTER SURVEYOR'S RETURN.

Where land is returned as mineral land, the burden of proof to show otherwise is upon the party who disputes such record.

Johns v. Marsh, 15 L. D. 196, p. 200.
Walton v. Batten, 14 L. D. 54.
Aspen Consol. Min. Co. v. Williams, 23 L. D. 34, p. 38.

Where land has been returned as nonmineral by a public survey and originally classed as such, and shown not to be in a mining region but on which a mining location has been made, the burden on a party attacking such mineral survey is not required to do more than overcome and destroy the effect of such subsequent mineral location and mineral survey, and he is not required to show by physical demonstration that there is no valuable mineral in any part of such tract.

Washington v. McBride, 25 L. D. 167, p. 182.

A mineral claimant is entitled to hold land within a railroad grant where he proves to the satisfaction of the local officers that the land is mineral in character, though it was originally returned as agricultural.

Johns v. Marsh, 15 L. D. 196, p. 200.
 See *Commissioners of King Co. v. Alexander*, 5 L. D. 128.
Davis v. Weibbold, 139 U. S. 507.

While the location can not be legally made without proof of discovery, yet where a tract of land was returned as mineral, and the surrounding lands have been patented as mineral, an applicant for a patent for such lands as mineral is entitled, as against the railroad company, to a hearing in order to determine the mineral character of the land.

Zadig v. Central Pacific R. Co., 20 L. D. 26, p. 27.

A certificate of location of a mining claim is not in itself evidence of the mineral character of the land, and is not sufficient to overcome an agricultural return by the surveyor general, where such a certificate is nothing more than a notice or statement of the location of the mining claim the recording of which is intended to impart constructive notice of the claim as well as of its locality and extent.

Magruder v. Oregon & California R. Co., 28 L. D. 174, p. 177.

A certificate of a location of a mining claim on land returned as agricultural is not of itself sufficient evidence of the mineral character of the land to place the burden of proving the contrary upon one who asserts its agricultural character.

Magruder v. Oregon & California R. Co., 28 L. D. 174, p. 177.
McQuiddy v. California, 29 L. D. 181, p. 182.
Elds Min., etc., Co., In re, 29 L. D. 279, p. 280.
 Overruling *Northern Pacific R. Co. v. Marshall*, 17 L. D. 545; *Sweeney v. Northern Pacific R. Co.*, 20 L. D. 394; *Walker v. Southern Pacific R. Co.*, 24 L. D. 172.

j. PROOF OF MINERAL SPRINGS INSUFFICIENT.

Lands bearing mineral springs are not mineral lands and can not be patented as such.
Pagosa Springs, In re, 1 L. D. 562.

A mineral application will not be permitted where the evidence fails to satisfactorily show that mineral in paying quantities exists, or has been found on the claim,

and where the object and purpose seem to be to obtain title to some hot springs, and where the improvements consist chiefly in building near such springs, erected for the accommodation of guests, and people visiting the springs for their health.

Morrill v. Margaret Min. Co., 11 L. D. 563.

13. DESCRIPTION OF CLAIM.

a. ACCURACY REQUIRED.

Where the description of land embraced in an application for patent for a mining claim is expressed in terms of the general public survey and the surveys of the excluded mining claims, such description is sufficiently accurate and the surveys taken together furnish all the data necessary to correctly compute the area of the land and to prepare therefrom an accurate description of the land to be incorporated into the patent.

Mary Darling Placer Claim, In re, 31 L. D. 64, p. 66.
Overruling Knight, In re, 30 L. D. 227.

The description and survey in an application for a placer mining claim should be made with mathematical accuracy, as it is the duty of the department in issuing a patent to such a claim to describe with mathematical accuracy the ground conveyed, and this can not be done if it is not so made in the application.

Canuck Lode, In re, 22 L. D. 711, p. 712.
Holmes Placer, In re, 26 L. D. 650, p. 652.
Holmes Placer, In re, 29 L. D. 368.

The description of a mining claim in an application for patent need not necessarily note on the plat and field notes conflicts with the unofficial surveys.

Wisconsin Min. Co. v. Cooper, In re, 10 C. L. O., 69.

If corners are destroyed or the marks on the surface obliterated, either by accident or design, pending an application for a patent, the applicant should not be put to the expense of reestablishing these before patent can issue, nor should the absence of these marks be a ground for protest, as the Government and all persons concerned are amply protected by the official field notes and plats on file in the proper office.

Byrne v. Slauson, 20 L. D. 43, p. 44.

The data contained in the field notes, illustrated by the official plat, constitute the official and controlling advice of the locus and extent of a claim or claims for which patent is sought, but a claimant is not necessarily entitled to a patent to all the land described in the field notes and shown upon a plat embraced in his claim or claims.

Richmond and Other Lode Claims, In re, 34 L. D. 554, p. 555.

The Land Department requires the meander line of mining claims upon unsurveyed lines, where they border upon lakes and streams, to coincide with such meander line as would be established by a public survey.

Johnson, In re, 33 L. D. 593, p. 594.

Where, in running the exterior boundary of a mining claim, two surveys conflict, the plat and field notes should show the extent of the conflict and the area embraced by both surveys, as well as the distances from the established corners at which the exterior boundaries of the respective surveys intersect each other.

Russell, In re, 5 C. L. O. 18.

Lands sought to be patented must be shown to be covered by the location on which the application for patent is based, and no patent can issue for a claim any part of which is outside its location.

Dyer v. Jackson, 6 C. L. O. 171.

The position of each of several mining claims, as well as their relative positions, must be determined as the claims are defined and established upon the ground, and all errors of description of the position of either claim and of conflicts between them must give way thereto.

United States Min. Co. v. Wall, 39 L. D. 546, p. 550.
See Sinnott v. Jewett, 33 L. D. 91.

b. CONNECTION WITH SURVEY OR MONUMENTS.

A mining claim must, by actual survey, be tied to a corner of the public survey or to a United States mineral monument, and the surveyed tie line, definitely fixing the locus of the claim, can not be disregarded.

Sinnott v. Jewett, 33 L. D. 91, p. 96.

The location and description of a mining claim in the notice of application for patent is sufficient where the claim is designated according to the official survey, and where such survey connects the claim to a monument or corner believed by the surveyor to be a corner of the public survey, and where the course and distance to such corner are properly given.

Albermarle and Other Lode Min. Claims, In re, 30 L. D. 74, p. 76.

Where two or more mineral monuments are established in the same district, they should be accurately connected with each other by surface measurement or by triangulation, and if practicable the initial points of adjacent mining districts should be similarly connected.

Cavanah, In re, 8 C. L. O. 5.

The location of a mining claim on unsurveyed land must be connected by course and distance with a mineral monument, and this connection and description must be shown in the publication notice, otherwise the claim is not definitely fixed.

Broad Ax Lode, In re, 22 L. D. 244, p. 245.

c. REFERENCE TO NATURAL OBJECTS OR MONUMENTS.

A claim for mineral lands must be correctly described by reference to natural objects or permanent monuments, and the description must be incorporated in the patent.

United States v. San Perdo & Canon del Agua Co., 4 N. Mex. 225, p. 304.

An application for a patent for a mining claim must show that the location of the claim was distinctly marked on the ground by reference to a natural object or permanent monument, and where the description of the claim neither absolutely nor approximately established the identity of the location the final survey is not established.

Dodge, In re, 6 C. L. O. 122, p. 123.

See Dyer v. Jackson, 6 C. L. O. 171.

The descriptions in mineral patents by courses and distance do not prevail over those by reference to natural objects or permanent monuments, but when such patents remain outstanding the Land Department does not deal with lands included in the descriptions contained in the patents and has no jurisdiction or authority to correct any mistakes that may have been made in the survey.

Sinnott v. Jewett, 33 L. D. 91, p. 99.

See Monofraction Lode Min. Claim, In re, 31 L. D. 121.

Drogheda & West Monroe Extension Claims, In re, 33 L. D. 183.

d. MISTAKES AND INSUFFICIENT DESCRIPTION—EFFECT.

Where a mining claim is not properly described in the official survey, and where the mistake in description is a clerical error, the entryman should be allowed to make entry for the claim upon showing that he has given a proper new notice and furnished a new plat and field notes properly describing the claim.

Wheeler v. Smith, 23 L. D. 395.

Where a mistake in the description of a mining claim is that of the deputy surveyor and not of the claimant, the latter should not be put to the trouble and expense of entirely new proceedings to entitle him to a patent where the claim has been approved.

Wheeler v. Smith, 23 L. D. 395, p. 396.
See *Wheeler v. Smith*, 5 Wash. 704.

A mistake in the description of a mining claim may be corrected by a reconveyance as against a second locator or purchaser who has knowledge of the mistake, and who makes his location or purchase to obtain an advantage by reason of such mistake.

Baldwin Star Coal Co. v. Quinn, 28 L. D. 307, p. 308.

Where lands embraced in an application for patent for a mining claim consist of irregular tracts, in surveyed territory, and are not capable of description in a patent with the accuracy that should be contained in such an instrument, a resurvey and a correction of the description may be ordered.

Mary Darling Placer Claim, In re, 31 L. D. 64, p. 65.
See *Holmes Placer Claim*, In re, 26 L. D. 650.

An application for a patent for a mining claim will not be denied where no adverse claim has been filed, because of the mere lack of certainty of the published notice in the matter of description, but the entry should be sent to the board of equitable adjudication.

Alabama Quartz Mine, In re, 14 L. D. 563.
New York Lode & Mill Site, In re, 5 L. D. 513.
Newport Lode, In re, 6 L. D. 546.
Buena Vista Lode, In re, 6 L. D. 646.
Mimbres Min. Co., In re, 8 L. D. 457.
Nil Desperandum Placer, In re, 10 L. D. 198.
Silver King Quartz Mine, 11 L. D. 234.
Oro Placer Claim, In re, 11 L. D. 457.

14. LINES AND BOUNDARIES—LOCATION AND EFFECT.

A mineral claimant is restricted to the lines of his survey as to the linear course of the lode.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222, p. 223.
See *Patterson v. Hitchcock*, 3 Colo. 533.
Wolfley v. Lebanon Min. Co., 4 Colo. 112.

The requirements of this section as to the proof showing accurately the boundaries of a mining claim in an application for patent applies to a placer claim located on surveyed lands.

Worthen v. Sidway, 72 Ark. 215, p. 224.

The location of lines of a mining claim to bring them within legal restrictions does not invalidate the original location, as an applicant may reduce his claim by proper amendment to include the legal area.

Empy, In re, 10 C. L. O. 102, p. 103.

In view of the purpose and effect of the parallel end lines it is immaterial to a prior locator where the end lines of a junior location are made, as they can not, in any event, disturb in the slightest either his surface or underground rights.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 85.

The end lines of a mining claim should not be established beyond the point where such location intersects the exterior boundaries of ground which has been excluded, and where the lode in its onward course passes within such excluded ground.

Plevna Lode, In re, 11 L. D. 236, p. 237.

Consolidated Min. Co., In re, 11 L. D. 250.

See Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, pp. 81, 82.

The Spanish and Mexican mining law confined the locator to perpendicular lines on every side.

Mining Co. v. Tarbet, 98 U. S. 463, p. 468.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 61.

It is not conceived that a person would discover a vein or lode, and so describe the location as to make one of the end lines run through the center of the discovery shaft, thus leaving territory not located in which it was demonstrated ore existed, and which might have been included in the description.

Poplar Creek Consol. Quartz Mine, In re, 16 L. D. 1, p. 2.

15. GROUP OF CLAIMS IN ONE APPLICATION.

The owner of any number of contiguous mining locations may present a single application for patent covering the group of claims, together with one plat, and upon proof of the work required by this section upon the consolidated claim, is entitled to a patent for such consolidated claim.

Smelting Co. v. Kemp, 104 U. S. 636, p. 653.

Carson City, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 664.

Good Return Min. Co., In re, 4 L. D. 221.

Rogers, In re, 4 L. D. 284.

Champion Min. Co., In re, 4 L. D. 362, p. 363.

Mackie, In re, 5 L. D. 199, p. 201.

Zephyr and Other Lode Claims, In re, 30 L. D. 510.

Hidden Treasure Consol. Quartz Mine, In re, 35 L. D. 485, p. 487.

Mountain Chief, etc., Min. Claims, In re, 36 L. D. 100, p. 102.

McDonald v. Montana Wood Co., 14 Mont. 88, p. 91.

The intention of this section is that the land embraced in the plat of the survey, and for which an application for patent is filed, may consist of a single mining location or many such locations held in common, whether the owner purchases adjoining locations and adds to his own or makes all the locations himself, and they all become his claim.

Hidden Treasure Consolidated Quartz Mine, In re, 35 L. D. 485.

See Smelting Co. v. Kemp, 104 U. S. 636, p. 649.

Pilot Hill and Other Lodes, In re, 35 L. D. 592, p. 594.

While there is no express requirement that a number of lode mining claims sought to be embraced in a single application for patent shall be contiguous, yet the provisions of the mining laws respecting the proceedings to secure patent to such claims necessarily imply that the locations shall together comprise but one body of land.

Hidden Treasure Consolidated Quartz Mine, In re, 35 L. D. 485, p. 486.

The claims held in common, which may be included in one patent under this section, are the separate locations for each of which the annual expenditure must be made.

Mackie, In re, 5 L. D. 199, p. 202.

Dawson, In re, 40 L. D. 17, p. 24.

See Chambers v. Harrington, 111 U. S. 350.

The location or consolidation of contiguous or adjoining claims, where more than one is involved, is what is recognized in the statute as constituting the subject of a single patent proceeding.

Hidden Treasure Consolidated Quartz Mine, In re, 35 L. D. 485, p. 487.

Where the right to a patent for an entire group of mining claims is in fact earned by the construction of a common improvement of a character and value sufficient for that purpose, then it can make no difference that patent for all the claims is not applied for at one time, or that a part may be patented and disposed of before patent to the remainder is applied for, and a change of ownership in any of the claims will not defeat this right.

Mountain Chief, etc., Lode Min. Claims, In re, 36 L. D. 100, p. 102.

This section authorizes the inclusion in an application for patent of land claimed and located for valuable deposits, otherwise spoken of as "a piece of land" and as a "claim or claims in common."

Mayflower Gold Min. Co., In re, 29 L. D. 7, p. 8.

The requirement that mining claims held in common and sought to be embraced in a single application for patent and entry shall be contiguous within the meaning of that word, as understood and applied generally in the disposal of public lands, is a proper one, and it is in full harmony with the purpose and intent of the mining law respecting the proceeding necessary to obtain patent.

Hidden Treasure Consol. Quartz Mine, In re, 35 L. D. 485, p. 488.

An application for a patent is not bad because it embraces separate surveyed claims covered by descriptive field notes and plats of each.

DeWitt, In re, 9 C. L. O. 34, p. 35.

See Smelting Co. v. Kemp, 104 U. S. 636.

An application for patent may embrace more than one placer location.

Good Return Min. Co., In re, 4 L. D. 221.

Rogers, In re, 4 L. D. 284.

When application is made for patent upon a mining claim embracing several locations, an adverse claimant may prove abandonment of any one of such locations by failure to make annual expenditure thereon, or upon a common claim for its benefit, even though such adverse claimant may not show in himself a good adverse claim by reason of like failure.

Good Return Min. Co., In re, 4 L. D. 221.

An application for a patent stating that the land applied for contains "valuable deposits of mineral-paint rock in place," and asking that the applicant be allowed to pay the Government price, as required by the laws providing for the disposal of the public lands containing valuable mineral deposits, is not sufficient as an application for a placer claim, as there is no evidence of compliance with the mining laws or regulations, and the statement that it contains "mineral-paint rock in place" would constitute it a lode claim, and being for 20 acres of land it could only be taken as a placer claim.

Barnes, In re, 7 L. D. 66, p. 67.

16. NONCONTIGUOUS TRACTS NOT PATENTABLE.

Noncontiguous tracts upon either side of an intersecting placer claim can not be entered as one lode claim, but the lode claimant must elect which of the two tracts he will accept.

Cripple Creek Gold Min. Co. v. Mt. Rosa, etc., Co., 26 L. D. 622, p. 627.

See Kohnyo & Fortuna Lodes, In re, 28 L. D. 451, p. 454.

There is no authority under the mining law for embracing in an application for a patent a lode and a placer claim where such lode is not within the exterior limits of the placer location.

Elda Min., etc., Co. v. Mayflower Gold Min. Co., 26 L. D. 573.

Mayflower Gold Min. Co., In re, 29 L. D. 7.

An applicant for a patent for a mining claim having a discovery shaft on a vacant strip can not make a valid location of the vein or lode of a portion of land not contiguous and separated by land held and owned by others by virtue of a patent, but to make a valid location he must have all portions of his lode contiguous and there must not be an intervening claim.

Griffin, In re, 2 L. D. 735, p. 737.

An application for a patent for a lode mining claim may include ground lying on both sides of a patented mill site on due proof of the discovery of the located vein or lode in both parts of such lode claim.

Paul Jones Lode, In re, 31 L. D. 359, p. 360.

See Paul Jones Lode, In re, 28 L. D. 120.

Andromeda Lode, In re, 13 L. D. 146.

Bimetallic Min. Co., In re, 15 L. D. 309.

Mabel Lode, In re, 26 L. D. 675.

The Land Department has never sanctioned the patenting in one proceeding of noncontiguous tracts of land by authorizing the laying of the lines of junior locations over and upon prior patented ground.

Hidden Treasure Consol. Quartz Mine, In re, 35 L. D. 485, p. 488.

See Hidee Gold Min. Co., In re, 30 L. D. 420.

Alice Lode Min. Claim, In re, 30 L. D. 481.

An applicant for a lode claim may select which of the two parts of the lode he will claim where such lode or vein is intersected by nonmineral lands, but he must show a discovery of mineral thereon and performance of the necessary labor, or that the required improvements have been made.

Paul Jones Lode, In re, 28 L. D. 120.

Andromeda Lode, In re, 13 L. D. 146.

Bimetallic Min. Co., In re, 15 L. D. 309.

Mabel Lode, In re, 26 L. D. 675.

An applicant for a mining claim having a discovery shaft on a vacant part of such claim can not make a valid location on such vein or lode of a portion of the land not contiguous and separated by a portion patented to other persons.

Griffin, In re, 2 L. D. 735.

The statute does not contemplate that a number of mining locations held in common, situated separate and apart from one another, may constitute the composite claim or group for which patent may be obtained in one proceeding, and the statute is clearly inapplicable to detached locations which can not, in the nature of things, form the piece or body of land to which the requisites to the obtaining of a patent are made to relate.

Hidden Treasure Consol. Quartz Mine, In re, 35 L. D. 485, p. 487.

17. RELINQUISHMENT OF PART OF CLAIM.

A mineral claimant has the right to relinquish any part of his location not essential to its validity without prejudice as to the residue of his claim.

Carrie S. Gold Min. Co., In re, 29 L. D. 287, p. 289.

See Connell, In re, 29 L. D. 574, p. 575.

An applicant for patent for a mining claim, in order to secure an amendment to his application so as to include land relinquished to the United States, must make a new publication and posting and otherwise comply with the mining regulations.

Woods v. Holden, 26 L. D. 198, p. 202.

Woods v. Holden, 28 L. D. 24 (on review).

Victor No. 3 Lode Claim, In re, 28 L. D. 436, p. 437.

Burnside v. O'Connor, 30 L. D. 67, p. 69.

While it is desirable that all the ground in a single mining location or claim to which a claimant has the right of possession should be covered by one proceeding for patent, yet when a claimant elects to make application for patent for part of the claim only, his proceedings can not be delayed in the Land Department to await the final issue of proceedings in court as to other parts of the claim.

Little Annie No. 5 Lode Min. Claim, In re, 30 L. D. 488, p. 489.
See Gilson Asphaltum Co., In re, 33 L. D. 612, p. 615.

A part of a vein or lode upon public land that is continuously held and worked in good faith is not forfeited because of a surrender or waiver of that part of the location containing the original discovery shaft.

Hagland, In re, 1 L. D. 593, p. 595.

Where a part of a tract of land included in an application for patent to a mining claim is abandoned, or where rights obtained thereto by earlier proceedings have been waived by delay, the application as to such part of a tract must be denied.

Fox v. Mutual Min., etc., Co., 31 L. D. 59, p. 62.

A conveyance of a vein or lode is in the nature of the conveyance of a mine which may be carved out of any portion of land embracing the same, and any dispute as to the question of boundaries is a question of fact.

Blue Bird Min. Co. v. Largey, 49 Fed. 289, p. 292.

18. CONFLICTING CLAIMS—EXCLUSION OF CONFLICTING AREAS— EFFECT.

The exclusion of conflicting areas in an application for a patent for a mining claim is not an abandonment or a relinquishment of the ground in conflict, where the applicant's right to the land in conflict has been asserted by the filing of an adverse claim which relates exclusively to the land in conflict, but the application may be granted as to the remainder of the claim.

Rebellion Min. Co., In re, 1 L. D. 542.

In an application for a patent for a lode claim where the survey conflicts with a prior valid lode claim, and the ground in conflict is excluded, the applicant has no right to the excluded ground and no right to any vein or lode which has its apex within such excluded ground.

Cayuga Lode, 5 L. D. 703, p. 704.

Rights granted to locators are restricted to locations on veins, lodes, or ledges situated on the public domain, and when the survey conflicts with a prior valid lode claim or entry and the ground in conflict is excluded the claimant's right to the lode claim terminates where the lode in its onward course or strike intersects the exterior boundary of such excluded ground and passes within it.

Plevna Lode, 11 L. D. 236, p. 237.
Consolidated Min. Co., In re, 11 L. D. 250.

Where a junior lode location conflicts with a prior valid claim and the ground in conflict is excluded, the junior claimant is limited to a line passing through the point where the lode or vein intersects the exterior line of the senior location, as the surface right is simply an adjunct to the lode claim and such right could not extend beyond the same.

Engineer Min., etc., Co., 8 L. D. 361, p. 362.
See Branagan v. Dulaney, 2 L. D. 744; 13 C. L. O. 190.

Applicants for patent for a mining claim are presumed to know the surface conflicts that exist against the claim, and good faith on their part should prompt them to make them known whether they have been officially surveyed or not, so that if the conflicts are conceded they may be excepted from the survey.

Canuck Lode, In re, 22 L. D. 711, p. 712.

Where a mineral claim conflicts with a prior preemption claim that part of the mineral claim lying beyond the point where the vein or lode intersects such prior preemption claim must be excluded.

Bimetallic Min. Co., In re, 15 L. D. 309.
 See Andromeda Lode, In re, 13 L. D. 146.
 Silver Queen Lode, In re, 16 L. D. 186.
 Woods v. Holden, 27 L. D. 375, p. 378.

An applicant for a patent may elect to take patent for the portion of his claim that is not in controversy and may withdraw the part that is not in controversy, but by the withdrawal of this part he does not waive and renounce all interest in the tract withdrawn, but may thereafter assert his right.

Aspen Consol. Min. Co., In re, 22 L. D. 8.
 See Branagan v. Dulaney, 2 L. D. 744.
 Adams Lode, In re, 16 L. D. 233.
 Black Queen Lode v. Excelsior No. 1 Lode, 22 L. D. 343, p. 344.
 Aspen Consol. Min. Co. v. Williams, 23 L. D. 34, p. 37.

The relinquishment by an applicant for patent of any part of the conflicting ground runs to the United States, though declared to be made in favor of other claimants, and, when filed, absolutely relieves the land from any claim whatever; and if filed before any adverse claim is presented, it operates to withdraw from any pending application the land relinquished, and an adverse claim as to such relinquished operation is unnecessary.

Shields v. Simington, 27 L. D. 369, p. 371.
 See Woods v. Holden, 28 L. D. 198.
 Woods v. Holden, 27 L. D. 375.
 Woods v. Holden, 28 L. D. 24.
 Victor No. 3 Lode Claim, In re, 28 L. D. 436, p. 437.

An express exclusion of certain conflict ground in the notice of an application for patent to a mining claim effectually eliminates such conflict area to the same extent as if the exclusion was set out in the application itself.

Richmond & Other Lode Claims, In re, 34 L. D. 554, p. 555.

An application for a patent to one of conflicting claims presents the question as to which of the claims is superior within the overlapping surface boundaries, and the inclusion of the areas in conflict within a patent on such application is necessarily a determination that at the time of its issue such area was a part of the patented claim.

United States Min. Co. v. Lawson, 134 Fed. 769, p. 775.

An application for a patent for a vein or lode beyond the lines of conflicting survey should not be denied because of a sale or surrender of some other part of such vein or lode originally embraced in the discovery and location.

Hagland, In re, 1 L. D. 593, p. 595.

Where there is no surface conflict in the application for a patent for a mining claim and an adverse claim filed by the owner of another claim, then there should be no stay of proceedings; but the surface as applied for may be patented, leaving subsequent developments to determine the rights of the respective claimants.

Jacques v. Robinson, In re, 7 C. L. O. 50.
 See Chollar Potosi Min. Co., In re, Copp's Min. Dec., 96, pp. 101, 105.

The fact that a mining survey upon which application for patent is based conflicts with the prior survey does not prevent the applicant from including the conflicting area in his application if no application for patent upon such previous survey has been made.

Nolan, In re, 9 C. L. O. 230.

A tract of land in conflict can not be assumed to be mineral in character because it is situated in a mineral belt and mining district and is adjacent to numerous mining claims.

Elda Min., etc., Co., In re, 29 L. D. 279, p. 281.

Ground in conflict, embraced in a mineral application but excluded from the entry, based upon such application becomes vacant at the date when such application matures into entry.

Adams Lode, In re, 16 L. D. 233, p. 235.

The fact that one mineral claimant relinquishes his claim to the ground in conflict with another claim furnishes no ground whatever for the assumption that other conflicts have been either relinquished or excluded.

McConaghy, In re, 29 L. D. 226, p. 227.

Matters of conflicting areas are questions which are open to determination by adverse proceedings in the proper court and will be waived on failure to make such adverse.

American Consol. Min., etc., Co., v. DeWitt, 26 L. D. 580, p. 581.

An agreement by a senior locator to deed to a junior adverse applicant certain land in conflict on securing title thereto will not work such a loss of the discovery on the part of such senior locator as will defeat his entire location.

Duxie Lode, In re, 27 L. D. 88, p. 90.

The locators of a mineral claim waives all right to a portion of his original location covered by a subsequent location where he expressly excludes the conflicting territory, and patent can not issue where it is shown that the improvements were within such excluded territory.

Independence Lode, In re, 9 L. D. 571, p. 572.

An express exclusion in an application of land in conflict with another lode, as shown by the plats and field notes, will not operate to except it from the claim if, in fact there is no conflict.

Steamboat Lode, In re, 13 L. D. 163, p. 164.

For the purpose of determining whether any conflict exists between a mineral claim and a homestead claimant the department may require the mineral claimant to have his mining claim surveyed and the boundaries marked, and the distances and courses given as required by the mining laws.

Winters v. Bliss, 19 L. D. 287.

In the case of conflicting locations the obligation rests on the applicant to have such a survey made as will correctly and definitely fix the area of his claim, and if there are conflicts with his claim which he concedes to others he should so inform the surveyor and have it accepted.

Canuck Lode, In re, 22 L. D. 711, p. 712.

See Woods v. Holden, 26 L. D. 198, p. 202.

A claimant of a tunnel site is not a necessary party to proceedings in the Land Department by lode claimants in making entries and obtaining patents to lode claims where any supposed conflicting claims are too uncertain, contingent, and intangible for determination.

Uinta Tunnel Min., etc., Co. v. Creed & Cripple Creek Min., etc., Co., 119 Fed. 164, p. 167.

19. SECOND INCLUSION OF LAND PROHIBITED.

Land included in a pending application for patent for a mining claim can not be included in a subsequent application for patent by another applicant.

Rocky Lode, In re, 15 L. D. 571.

Aspen Mountain Tunnel Lode, No. 1, In re, 26 L. D. 81, p. 82.

Stranger Lode, In re, 28 L. D. 321, p. 325.

Morgan v. Antlers Park Consol. Min. Claim, In re, 29 L. D. 114.

McCormack v. Night Hawk and Nightingale Gold Min. Co., 29 L. D. 373, p. 378.

Fox v. Mutual Min., etc., Co., 31 L. D. 59, p. 61.

Wanda Gold Min. Co. v. E. F. C. Min., etc., Co., 31 L. D. 140, p. 142.

Stemmons v. Hess, 32 L. D. 220, p. 222.

Adams v. Polglase, 32 L. D. 477.

Adams v. Polglase, 33 L. D. 30, p. 31.

An application for patent will not be received where the claim conflicts with a claim embraced in a prior pending application, as the relative rights of the applicants must be determined in an adverse claim.

Rebellion Min. Co., In re, 1 L. D. 542.

Where a prior lode location is excluded from an application the applicant has no right to the lode beyond the point where the same in its onward course or strike intersects the exterior boundary of the excluded location, and through this point but not beyond it the end line may be established.

Stranger Lode, In re, 28 L. D. 321, p. 325.

The rule which forbids the reception of an application for patent to a mining claim which conflicts with a claim embraced in a prior pending application is derived from that provision of the statute which prescribes the filing of adverse claims.

Chavanne, In re (On Review), 7 C. L. O. 116, p. 117.

An application for a patent for a mining claim, which conflicts with a claim embraced in a prior pending application should be denied under the provisions of this section.

Rebellion Min. Co., In re, 1 L. D. 542.

Where two applications for patent for mining claims covering the same grounds have been made and accepted and the one as made has been abandoned, the ground in conflict falls within the second application and is subject thereto.

Daly, In re, 10 C. L. O., 167.

20. RIGHT TO PATENT.

A patent may be issued to the assignee of a claim where the assignment has been made after the original application has been filed.

Lackawanna Placer Claim, In re, 36 L. D. 36, p. 38.

See *Teller*, In re, 26 L. D. 484.

Auerbach, In re, 29 L. D. 208.

A person who has parted with his interest in a claim can not relinquish the same, but its status must be maintained for the protection of the transferee.

Parks v. Hendsch, 12 L. D. 100, p. 101.

Transfers made subsequent to the filing of an application for a patent for a mining claim will be disregarded and patent issued in the name of the applicant, but in such case the patent will inure to the benefit of the transferee; but this rule does not prevent or even limit a claimant from transferring his possessory right or interest in the mining claim.

Liddia Lode Min. Claim, In re, 33 L. D. 127, p. 129.

A locator who has fully complied with the law in all its requirements as to locating, working, and made application for a patent, may sell and assign his interest, and the patent may be issued in the name of the locator upon the entry as made.

Smith, In re, 3 L. D. 340.

21. APPLICATION FOR PLACER CLAIM—PRACTICE.

A placer application should contain such data as will support the claim that the land applied for is placer ground containing valuable mineral deposit; and if mineral other than gold is claimed, it must be described fully and in detail—the kind, nature, and extent of the deposit, with the reasons why the same is regarded as a valuable mineral claim.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 303.

An application for patent for a placer claim will not be denied on the ground that a part of the required work was done before the claim was located where it appeared that the claimant acted in good faith, and that a proper amount of work has in fact been done, and where there is no adverse claim.

Clark v. Taylor, 20 L. D. 455, p. 457.
See Wight v. Tabor, 2 L. D. 738.

There is no analogy between an application for patent to and an entry of a placer mining claim, where such application excludes existing lode claims, and an application for patent which embraces several lode claims held in common, where the question is as to the right to embrace in one patent proceeding several mining claims held in common and some of which are noncontiguous.

Hidden Treasure Consol. Quartz Mine, In re, 35 L. D. 485, p. 488.
See Mary Darling Placer Claim, In re, 31 L. D. 64.

A placer application, relative to the date of the filing of which the question of the known existence of lodes within the placer limits is to be determined, is one which may result in the acquisition of the equitable title, and this necessarily comprehends the placer character of the land embraced in the application, but the application will fail if that essential feature is not established.

Clipper Min. Co. v. Eli Min., etc., Co., 33 L. D. 660, p. 670.
See Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401.

The rule imputing knowledge of the existence of a lode location, where its boundaries are marked on the surface and such location properly recorded, applies equally to placer locations.

Aspen Consol. Min. Co. v. Williams, 23 L. D. 34, p. 50.

On the principle that the Land Department may inquire either of its own motion or at the instance of an agricultural protestant concerning the character of land therefore involved in an adverse suit, and by the judgment of the court awarded to one of the parties litigant, the Land Department may of its own motion inquire into the question as to the placer character of the land in controversy and adjudicate the rights of the claimants thereto accordingly, although the rights of possession have been awarded one claimant in an adverse suit, as the judgment of the court does not settle beyond the reach of inquiry by the Government the right to a patent for the land controversy.

Clipper Min. Co. v. Eli Min., etc., Co., 33 L. D. 660, p. 669.
Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 232.
See Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401.

While the discovery and location of a placer mining claim establishes in the owner the right to the possession of the superficial area within its boundaries for all purposes connected with and incident to its use and operation, yet such location does not operate to give title or right of possession to veins or lodes within its limit, or preclude the right of discovery and location thereof by others.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 102.

The amount of land which may be located as a vein or lode claim, the amount which may be located as a placer claim, the price per acre required to be paid in the two cases when patents are obtained, the rights conferred by the respective locations and patents, and the conditions upon which such rights are held, differ to such extent as to make the question whether mineral lands claimed belong to one class or to the other a matter of importance both to the Government and to the mineral claimant.

Henderson v. Fulton, 35 L. D. 652, p. 662.

22. APPLICATION FOR LODE WITHIN PLACER CLAIM.

Where an application for a patent for a lode location in a placer mining claim has been allowed, publication regularly had, and entry made, the fact that the lode claim

exceeds 25 feet in width on each side of the vein, in the absence of an adverse claim, will not cause the claimants to be remitted to a repetition of the preliminary requirements, but they are entitled to take their lode and 25 feet only on each side.

Shonbar Lode, In re, 1 L. D. 551, p. 552.

See *Robinson v. Roydor*, 1 L. D. 564.

Shonbar Lode, In re, 3 L. D. 388.

Elda Min., etc., Co. v. Mayflower Gold Min. Co., 26 L. D. 573, p. 574.

An application for a patent for a lode claim within the limits of a placer claim should not be granted during the pendency of a suit commenced by an adverse claimant under an application for a patent for a placer claim.

Clipper Min. Co. v. Eli Min., etc., Co., 33 L. D. 660, p. 662.

See *Clipper Min. Co. v. Eli Min., etc., Co.*, 194 U. S. 220.

Clipper Min. Co., In re, 22 L. D. 527.

Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401.

Where land embraced in a placer location is found to be nonplacer in the patentable sense, so that lode claimants can not take title to lodes in controversy and in connection therewith, the basis of their claim to the lodes disappears.

Clipper Min. Co. v. Eli Min., etc., Co., 33 L. D. 660, p. 670.

See *Clipper Min. Co. v. Eli Min., etc., Co.*, 34 L. D. 401.

23. APPLICATION FOR CLAIMS WITHIN TOWN SITES.

The fact that a part of a mining claim is occupied by the residents of a town is no bar to an entry under the mining laws if the land is mineral and belongs to the United States.

Rankin, In re, 7 L. D. 411, p. 415.

See *Steel v. Smelting Co.*, 106 U. S. 447.

The fact that land may be valuable for town lots would not prevent its disposal under the mineral laws if it is in fact mineral land.

Washington v. McBride, 18 L. D. 199, p. 207.

Goldstein v. Juneau Townsite, 23 L. D. 417.

Where land was not known mineral land at the date of a town-site entry, a subsequent application for mineral patent must be rejected.

Harkrader v. Goldstein, 31 L. D. 87, p. 96.

Goldstein v. Juneau Townsite, 23 L. D. 417 (overruled and annulled).

An applicant for a patent for a lode mining claim within a patented town site, based upon a location subsequent to such patent, must show affirmatively the existence of the mine or the lode location and its true location, and prove his possessory right and value of work performed; and he can claim only the necessary surface ground for the convenient working of his mine not in excess of the legal width at the date of the town-site patent.

Papina v. Alderson, 10 C. L. O. 52, p. 53.

See *Steel v. Smelting Co.*, 106, U. S. 447.

24. APPLICATION FOR MILL SITE.

The preliminary requirements as to survey and notice applicable to vein and lode referred to in section 2337, R. S. in relation to mill sites are enumerated in this section.

Phoenix Gold Min. Co., In re, 40 L. D. 313, p. 314.

Proof by a foreign mining company showing the filing of its articles of incorporation as required by local laws may be accepted and considered in its subsequent application for patent for a mill site in connection with its mining location.

Alta Mill Site, In re, 9 L. D. 48 (on review).

25. APPLICATION FOR NONMETALLIFEROUS SUBSTANCES.

See secs. 2318, p. 8, 2319, p. 18, 2320, p. 80.

Guano is bone phosphate of lime mixed with hydrous phosphates and generally with some calcium carbonate, and often a little magnesia, alumina, iron, silica, gypsum, and other impurities, and is accordingly held to be mineral.

Richter v. Utah, 27 L. D. 95, p. 97.

Lands valuable for a deposit of gypsum may be entered as mineral land.

Phifer v. Heaton, 27 L. D. 57.

McQuiddy v. California, 29 L. D. 181, p. 183.

Public lands more valuable on account of deposits of limestone and marble than for agriculture may be patented under the mining laws.

Hooper, In re, 1 L. D. 560, p. 561.

Long v. Isaksen, 23 L. D. 353, p. 356.

Land containing limestone is not subject to location and entry as a lode claim, as a bed of limestone can not be construed "as a vein or lode," or "vein, lode, or ledge."

Sheperd v. Bird, 17 L. D. 82.

Long v. Isaksen, 23 L. D. 353, p. 356.

Wheeler v. Smith, 23 L. D. 395.

The improvements on a mining claim required as a condition on which patent may issue applies to phosphate deposits.

Phosphate Deposits, In re, 17 C. L. O. 74, p. 75.

An excavation made upon one of a group of placer claims containing a deposit of marble near the surface which can be most advantageously worked by means of quarries, and which excavation does not tend to facilitate the extraction of marble from other claims of the group, or to promote their development, is not such an improvement as will satisfy the statutory requirement of an expenditure of \$500 in labor or improvements upon, or for the benefit of each of a group of claims, as a condition precedent to obtaining patent.

Cassel, In re, 32 L. D. 85.

Schirm-Carey & Other Placers, In re, 37 L. D. 371, p. 374.

26. RIGHT OF APPLICANT TO CERTIFICATE OF PURCHASE.

The right to a certificate has its inception at the making of an application for a mining claim, and though delayed by adverse claims and proceedings, when issued the right relates back to the time of its inception for the purpose of supporting any right of the claimant.

Hamilton v. Southern Nevada Gold, etc., Min. Co., 33 Fed. 562, p. 565.

See Union Mill & Min. Co. v. Dangberg, 24 Fed. Cas. 590.

If an original defective certificate is amended such certificate and the amendment are properly received in evidence as constituting a perfect certificate having effect from the date of the original, and the location of a mining claim established by such original and amended certificate is prior and superior to a location made between the date of such original certificate and its amendment.

McEvoy v. Hyman, 25 Fed. 596, p. 600.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 394.

27. APPLICANT ENTITLED TO PATENT—EQUITABLE OWNER.

The certificate of purchase entitles an applicant to a patent, and the United States holds the title in trust for the holder of the certificate.

Deffeback v. Hawke, 115 U. S. 392, p. 405.

Rea v. Stephenson, 15 L. D. 37, p. 38.

On making the proper application and showing the required facts, and on the publication by the register, it is assumed that the applicant is entitled to a patent upon the payment of the required price, and that no adverse claim exists.

Smelting Co. v. Kemp, 104 U. S. 636, p. 656.

A locator who complies with all the proceedings essential for the issuance of a patent is the equitable owner of the mining ground, and the Government holds the premises in trust for him, and in a case involving his rights he must be treated as though the patent had been issued and delivered.

Dahl v. Raunheim, 132 U. S. 260, p. 262.

Gillis v. Downey, 85 Fed. 483, p. 487.

Reins v. Raunheim, 28 L. D. 526, p. 528.

A mineral claimant is entitled to a patent where his right thereto rests upon a judgment of the Land Office approving his entry and showing that his location was in all respects regular and valid, and the patent should contain no recitals or reservations in favor of third persons.

Simmons, In re, 7 L. D. 283, p. 235.

After discovery and location a subsequent compliance with this section entitles the locator to patent, and no showing beyond his first discovery is required by the mining laws or the regulations or decisions of the Land Department, and his right of possession is as complete as if he had a Government patent if he continues to put each year the required amount of labor and improvements thereon, and his title is then the highest known to the law.

Tam v. Story, 21 L. D. 440, p. 442.

See *Branagan v. Dulaney*, 2 L. D. 744.

When the applicant has complied with the requirements of the statute he is entitled to a patent upon the payment of \$5 an acre, and it is assumed that no adverse claim exists, and thereafter no objection from third persons to the issuance of a patent can be had except it be shown that the applicant has failed to comply with the statute.

Piru Oil Co., In re, 16 L. D. 117, p. 120.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 553.

When the locator of a lode claim files his diagram and a notice of his intention to apply for a patent the register of the local land office must post and publish the notice for 90 days, and if no adverse claim is filed the surveyor general shall, on application, survey the premises, make a plat thereof, designate and describe thereon the location and improvements and character of the vein, and on the filing of such diagram and proof of notice, and transmission of the same to the General Land Office, the applicant may receive a patent for such claim.

New Dundersberg Min. Co. v. Old, 79 Fed. 598, p. 602.

If a relocater of a mining claim holds possession and works his claim long enough and keeps all others out, his right to a patent is complete.

Belk v. Meagher, 104 U. S. 279, p. 287.

Malone v. Jackson, 137 Fed. 878, p. 881.

A relocater has no grant of any right of possession and his ultimate right to a patent depends entirely upon his keeping himself in and all others out, and if he is not actually in, he is in law out.

Belk v. Meagher, 104 U. S. 279, p. 287.

Malone v. Jackson, 137 Fed. 878, p. 881.

28. REHEARING.

The department is not justified in ordering a rehearing where the nonmineral character of the land in controversy has been once determined, unless upon a distinct showing of development made since the prior hearing, that would clearly demonstrate

that mineral has since been discovered in such quantities and by such development as to overcome the effect of the previous judgment as to the nonmineral character of the land.

Mackall v. Goodsell, 24 L. D. 553, p. 556.

29. PROSECUTION OF APPLICATION.

a. DILIGENCE REQUIRED.

The provisions of the mining laws relating to patents for mining claims require that an applicant for patent shall proceed with diligence to complete his application.

Cleveland v. Eureka Gold Min., etc., Co., 31 L. D. 69, p. 71.

Copper Bullion and Morning Star Lode Min. Claim, In re, 35 L. D. 27.

Woodman v. McGilvary, 39 L. D. 574, p. 576.

See Cain v. Addenda Min. Co., 29 L. D. 62.

Wolenberg, In re, 29 L. D. 302.

Barklage v. Russell, 29 L. D. 401.

Lucky Find Placer Claim, In re, 32 L. D. 200.

The filing of an application for a patent does not suspend the obligation to keep up the required work where such application remains dormant for years, and the full purchase money has not been paid, and the claim or mine is open to relocation.

Gillis v. Downey, 85 Fed. 483, p. 489.

b. UNREASONABLE DELAY—EFFECT.

The mining laws contemplate that proceedings under an application for patent for a mining claim should be prosecuted to completion within a reasonable time after the required publication, or after the termination of proceedings prosecuted on an adverse claim, and the failure to do so constitutes a waiver of all rights obtained by the proceedings upon the application, and this rule applies to placer as well as lode claims.

Cain v. Addenda Min. Co., 29 L. D. 62, p. 66.

Wolenberg, In re, 29 L. D. 302, p. 304.

Scotia Min. Co., In re, 29 L. D. 308.

Coleman v. McKenzie, 29 L. D. 359.

Barklage v. Russell, 29 L. D. 401, p. 403.

Reins v. Montana Copper Co., 29 L. D. 461, p. 464.

Homestake Min. Co., In re, 29 L. D. 689, p. 692.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 208.

Little Annie No. Five Lode Min. Claim, In re, 30 L. D. 488, p. 489.

Lucky Find Placer Claim, In re, 32 L. D. 200, p. 201.

See Wolenberg, In re, 29 L. D. 488.

The mining laws contemplate the proceedings under an application for patent shall be prosecuted to completion within a reasonable time after the required publication or after the termination of any proceedings on an adverse claim, and, failing to do so, the department will not assume after an unreasonable time that no adverse claim exists.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 204.

A mineral claimant does not lose his mining claim by delay in prosecuting his application for patent after publication of notice, but after an unreasonable delay, if the locator desires to obtain a title from the Government, he must again make application for a patent and give the necessary notice to enable any possible relocators to file their adverse claims and to obtain a judicial determination of conflicting rights.

Coleman v. McKenzie, 29 L. D. 359, p. 362.

Distinguishing Cain v. Addenda Min. Co., 29 L. D. 62.

This section and the following do not provide for a case where the applicant for a patent to a mining claim has permitted his land to lie dormant without payment for

the land for several years after publication of notice, and where valid adverse rights under a relocation have been established in the judicial proceedings the Land Department can not ignore or disregard the decision.

Cain v. Addenda Min. Co., 29 L. D. 62, p. 65.

See *Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co.*, 166 U. S. 108.

The rule requiring an applicant for patent to a mining claim to prosecute his application to completion within a reasonable time after the expiration of the period of publication, or after the termination of proceedings on an adverse claim, applies to an application for patent to a placer claim, as the judgment on the adverse claim proceedings can give the placer claimant no higher right to a patent than was obtained by the earlier but unperfected proceedings upon his own application for patent, and the judgment is of no avail against subsequent laches.

Marburg Lode Mining Claim, In re, 30 L. D. 202, p. 207.

See *Reins v. Montana Copper Co.*, 29 L. D. 461.

Wolenberg, In re, 29 L. D. 302.

Barklage v. Russell, 29 L. D. 401.

A delay in perfecting a right to a patent under a judgment rendered in proceedings begun by an adverse claimant or in opposition to an application of another, as well as delay in perfecting such right under an applicant's own application, may amount to such laches as will entail a loss of the right acquired by prior proceedings.

Reins v. Montana Copper Co., 29 L. D. 461, p. 464.

An application for a patent is not essential to the acquisition of maintenance of a mining claim, and the abandonment of an application leaves the title to the land, and of the right to possess the same, and to take mineral therefrom, the same as if no application for patent had been made.

Coleman v. McKenzie, 29 L. D. 359, p. 360.

C. ENTRY COMPLETED WITHIN CALENDAR YEAR.

Where an applicant for a patent for a mining claim fails, after the expiration of the period of publication of notice, to complete his entry within the calendar year in which such period of publication terminates, the application must be rejected in order to afford opportunity for determining the right of possession between contending parties.

Lucky Find Placer Claim, In re, 32 L. D. 200.

Cleveland v. Eureka No. 1 Gold Min., etc., Co., 31 L. D. 69.

Adams v. Polglase, 32 L. D. 477.

Surprise Fraction & Other Lode Claims, In re, 32 L. D. 93, p. 94.

Where no obstacle prevents the completion of patent proceedings within the calendar year in which publication of notice of application for patent was completed, and no valid reason is given as an excuse for the delay, an entry made after the expiration of such year must be canceled.

Woodman v. McGilvary, 39 L. D. 574, p. 576.

See *Copper Bullion & Morning Star Lode Min. Claims*, In re, 35 L. D. 27.

An applicant for patent, failing to prosecute the proceedings, and failure to pay the Government price and make entry at the proper land office beyond the period when a right of location might be gained through failure to work the claim, can not complain if another, setting up such failure and having made such location, is permitted to proceed according to the statute to secure title under his statutory right.

Seaton Min. Co. v. Davis, Copp's Min. Lands 296, p. 298.

See *Quigley v. Gillett*, 101 Cal. 462.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co. 114 Cal. 100.

The length of the interval of time between the end of the period of publication or the termination of court proceedings on an adverse claim, or the termination of protest proceedings in the Land Department, and the date of entry is immaterial so long as entry is made before the close of the current calendar year, and the principle with rea-

pect to the completion of the patent proceedings is the same whether the time remaining to the applicant within which to make entry be only a day or several months, and in the event of default in this respect, and there is a subsequent relocation of the claim, the applicant must be remitted to his original situation in order that opportunity may be afforded upon the institution of a new application for patent for the determination by a court of competent jurisdiction of any newly asserted adverse right or possession.

Lucky Find Placer Claim, In re, 32 L. D. 200, p. 202.

See *Cleveland v. Eureka No. 1 Gold Min. etc., Co.*, 31 L. D. 69.

d. EXCUSE FOR DELAY.

An applicant for a patent to a mining claim can not be said to delay his proceedings unnecessarily where such delay has been occasioned by the filing of an adverse claim and the institution of a suit thereon, or by the filing of a protest with the Land Department, as the law does not impute laches to a party because he has not done or offered to do something which he would not have been permitted to do had he made the offer.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 210.

See *Rocky Lode*, In re, 15 L. D. 571, p. 572.

Cain v. Addenda Min. Co., 29 L. D. 62.

Ring v. Montana Loan & Realty Co., 33 L. D. 132, p. 135.

An applicant for mineral patent can not be charged with laches and held to have waived and lost the rights acquired under his application where the failure to complete the proceedings is due to a pending suit filed and prosecuted by an adverse claimant, but this rule applies only where the remissness of the party himself is not responsible for the delay, but where such delay is occasioned by matters over which the applicant himself has no control.

Ring v. Mont. Loan & Realty Co., 33 L. D. 132, p. 135.

The delays in completing proceedings for application for patent for a mining claim which will protect the rights of the applicant during their pendency are those arising under the mining laws themselves whereby the applicant is prevented from completing his patent proceedings prior to the final termination of the litigation.

Laughing Water Placer, In re, 34 L. D. 56, p. 60.

See *Cain v. Addenda Min. Co.*, 29 L. D. 62.

Marble Lode Min. Claim, In re, 30 L. D. 202.

Where an application for an entry has been suspended on account of proceedings foreclosing a mortgage or quieting the title the entry may pass to patent on the termination of such proceedings.

White Extension West Lode, In re, 22 L. D. 677, p. 678.

An application for patent for a mining claim should not be suspended or delayed by reason of any suit or proceedings in court in regard to conflicting claims where the ground in conflict is excluded by the applicant.

Burnside v. O'Connor, 29 L. D. 301.

An applicant for patent for a mining claim is fully protected by proceedings had upon a prior application and the entry and the receivers receipt obtained thereby, and the bringing of an adverse suit under the statute as a precautionary measure does not constitute a recognition of the validity or regularity of another erroneously accepted and entertained application by the local officers, and does not have the effect of divesting, waiving, or suspending the applicant's right under such prior entry.

Morgan v. Antler's Park Region Consol. Min. Co., 29 L. D. 114, p. 115.

A coal land applicant can not be charged with negligence in the prosecution of his application because of a two months' delay on the part of the local officers in designating a newspaper for publication of notice, where the applicant himself proceeds

promptly with the publication and posting after such designation; and the applicant will not, under such circumstances, be required to pay a higher price because of a reappraisal in the meantime.

Rosser, In re, 42 L. D. 571 denying Rosser, In re (unreported), August 21, 1913.

D. SURVEY OF MINING CLAIM.

1. DUTY AND JURISDICTION OF SURVEYOR GENERAL.
2. NATURE AND SUFFICIENCY OF SURVEY—EFFECT.
3. SURVEY AND PLAT—TIME OF MAKING.
4. SURVEY AND DESCRIPTION—MONUMENTS.
5. SURVEYOR GENERAL'S CERTIFICATE AS TO PLAT AND SURVEY.
6. MONUMENTS CONTROL FIELD NOTES.
7. CONNECTING SURVEY WITH PUBLIC SURVEY.
8. AMENDED SURVEY PERMITTED.
9. ERRORS IN SURVEY AND DESCRIPTION.
10. SURVEY OF ADVERSE CLAIM NECESSARY.
11. JUNIOR SURVEY MUST SHOW CONFLICT.
12. SURVEY INCORPORATED IN PATENT.
13. SURVEY ON PATENTED GROUND—EFFECT.
14. FAILURE OF CLAIMANT TO HAVE SURVEY—EFFECT.
15. SURVEY AS EVIDENCE.
16. MONEY DEPOSITED FOR SURVEY—REFUNDING.

1. DUTY AND JURISDICTION OF SURVEYOR GENERAL.

The surveyor general has no jurisdiction over the question of title to a mining claim.

Russell, In re, 5 C. L. O. 18.

Thor, Venus, Bright Point Mines, In re, 5 C. L. O. 51, p. 52.

Mason, In re, 8 C. L. O., 104.

A surveyor general should refuse to approve a survey of a mining claim because the location was not made in conformity with the local laws and the rules and regulations of the mining district.

Chavanne, In re, 7 C. L. O. 115, p. 116.

The sufficiency of work performed and improvements made upon a mining claim, both as to amount and character, are matters to be determined by the surveyor general through his deputies or from observations, or from the testimony of parties having knowledge of the subject; and in the absence of fraudulent representations his determination, unless corrected by the Land Department before patent, must be taken as conclusive.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 685.

Under the instructions of the Land Office the surveyor general must require the applicant for survey to furnish a copy of the original record of location, properly certified to by the recorder having charge of the records of the mining locations in the district where the claim is situated, and to cause all official surveys of mining claims to be made in strict conformity to the lines established by the original recorded location.

Lincoln Placer, In re, 7 L. D. 81, p. 82.

See X Sulphur Mine & Sulphur King Mine, In re, Copp's Min. Lands 230.

Rose No. 1, etc., Lode Claim, In re, 22 L. D. 83.

It is the duty of the surveyor general, under this section, to determine from his own observation or from the testimony of others the sufficiency and value of labor and improvements made upon a mining claim by an applicant for a patent.

United States v. King, 83 Fed. 188, p. 191.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 685.

The surveyor general, in approving a survey of a mining claim, can not make any exclusions except as shown by official surveys in his office, as his office has no official knowledge of any location until application for survey has been made.

Canuck Lode, In re, 22 L. D. 711, p. 712.

The presumption is that the surveyor general, in the matter of obtaining the character and value of labor and improvements made upon a mining claim and in reporting the same, did his duty as an officer.

United States v. King, 83 Fed. 188, p. 191.

The statutory requirement as to the certificate of the surveyor general is not mandatory as applied to placer claims located upon surveyed lands and conforming to legal subdivisions, though it may be mandatory in cases of vein or lode claims.

Draper v. Wells, 25 L. D. 550, p. 556.

The word "claim," as used in this section, in reference to the survey has different meanings, and may refer either to a single location or to consolidated locations, and will be held to mean the latter when the intention of the section can be satisfied by this construction alone, and because the word is used both in the singular and plural.

Mackie, In re, 5 L. D. 199, p. 201.

The duties of the surveyor general and his deputies under this act are such as to disqualify him or any such deputy from making an application for a patent for a mining claim, the survey of which was made or approved by him or a deputy.

Neill, In re, 24 L. D. 393, p. 395.

See Waskey v. Hammer, 223 U. S. 85.

2. NATURE AND SUFFICIENCY OF SURVEY—EFFECT.

A survey of a mining claim merely does not withdraw the land embraced therein from sale or survey unless followed by application and entry.

Orient, Occident & Union Tunnel Lodes, In re, 7 C. L. O. 51.

See Campbell, In re, 4 C. L. O. 35.

Orient, Occident & Other Mines, In re, 7 C. L. O. 82.

Surveys of mining claims are in their nature public surveys.

Standart, In re, 25 L. D. 262, p. 264.

In every survey of a mining claim the following particulars should be observed:

(a) The exterior boundaries of the claim should be represented on the plat and in the field notes.

(b) The intersections of lines with those of a conflicting prior survey should be noted.

(c) Conflicts with unsurveyed claims should be shown by actual survey if the applicant does not claim the area in conflict.

(d) The total area of the claim embraced by the exterior boundaries should be stated and also the area in conflict with any intersecting survey.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 81.

Before a patent issues an actual survey of the claim on the ground should be made subsequent to the record of the notice of location as the law requires.

Lincoln Placer, In re, 7 L. D. 81, p. 82.

See X Sulphur Mine & Sulphur King Mine, In re, Copp's Min. Lands 230.

The survey of a mining claim consisting of several locations is legal, but the survey must, under the statute, distinguish the several locations and exhibit the boundaries of each.

Golden Sun Mir. Co., In re, 6 L. D. 808.

See Mackie, In re, 5 L. D. 199,

Where the line connecting the mineral claim with the public survey was, by the error of the deputy mineral surveyor incorrectly located, but the claim is otherwise sufficiently identified by the description given, and the good faith of the applicant is apparent, an entry will be allowed.

Childs, In re, 10 L. D. 173, p. 176.

Veta Grande Lode, In re, 6 L. D. 718.

That official surveys must be in accordance with the notices, but slight discrepancies as marked on the ground are not material, but a serious discrepancy will render the notice ineffectual.

Rose Nos. 1 & 2 Lode, In re, 22 L. D. 83.

Tifton Gold Min. Co., In re, 29 L. D. 718, p. 720.

Where the survey of a mining claim was approved by the surveyor general before the promulgation of rules and regulations, a new survey in conformity with such rules and regulations will not be required.

Range View Lode, In re, 7 L. D. 318.

The survey of a mining claim is not vitiated by the fact that the line connecting it with a public survey is more than 2 miles in length as it must be presumed that a deputy mineral surveyor would have made the connecting line shorter if there were any public surveys near it and where the notices show the four corners of the claim are tied to mining claims that have been officially surveyed.

Standart, In re, 25 L. D. 262, p. 264.

See Hallett & Hamburg Lodes, In re, 27 L. D. 104, p. 109.

Lloyd Searchlight Min., etc., Co., In re, 42 L. D. 485, p. 486.

The survey of a mining claim is sufficient where it identifies it by connecting it with the corner of a patented town site which is also the corner of a patented placer claim, both of which are properly connected with a United States mineral monument.

McCarthy, In re, 14 L. D. 105, p. 108.

See Hallett & Hamburg Lodes, In re, 27 L. D. 104, p. 109.

A survey made in accordance with the dictations of parties in interest, and not in accordance with the location upon which it is ordered, is a private and not an official survey, and this applies to original as well as to amended locations, but an entry should not be canceled on account of irregularity, but a new survey ordered to be in conformity with the amended location.

Lincoln Placer, In re, 7 L. D. 81, p. 82.

A survey is not conclusive evidence and may be objected to by an adverse claimant and overthrown by competent testimony.

Orient, Occident, and Other Mines, In re, 7 C. L. O. 82.

The fact that a discovery of mineral in one claim lies near the line of another lode claim does not in itself warrant a new survey or require a further discovery.

Adams Lode, In re, 16 L. D. 233, p. 235.

In every proceeding for patent the tribunal before which the matter is pending examines into and passes upon the correctness and legality of the survey and decides the question of the legality of the location itself.

Orient, Occident, and Other Mines, In re, 7 C. L. O. 82.

The first survey of a mining claim should be accepted.

Lizzie Bullock Min. Claims, In re, 7 C. L. O. 163.

Big Flat Gravel Min. Co., In re, 9 C. L. O. 52.

3. SURVEY AND PLAT—TIME OF MAKING.

The exterior boundaries of a claim should be represented on the plat of the survey and in the field notes as well as the intersection of the lines of the survey within the lines of conflicting prior surveys.

Instructions, *In re*, 1 L. D. 687, p. 693.

The plat of survey when required must show the boundaries and conflicts of each location of the consolidated claims.

Mackie, *In re*, 5 L. D. 199, p. 202.

See Argillite Ornamental Stone Co., *In re*, 29 L. D. 585, p. 586.

Golden Sun Min. Co., *In re*, 6 L. D. 808.

An application for a patent for a mining claim should not be rejected because the survey thereof was made before the claim was located, but an actual survey of the claim and the ground should be made subsequent to the recording of the notice of location and the application granted.

X Sulphur Mine & Sulphur King Mine, *In re*, 5 C. L. O. 100.

The survey and plat required to be filed by this section must be made subsequent to the record of the location of the mine, and a location survey made by a deputy surveyor can not be substituted for that required by the statute.

Rose No. 1, etc., Lode Claim, *In re*, 22 L. D. 83, p. 84.

See Lincoln Placer, *In re*, 7 L. D. 81.

After a survey is made the claimant must file in the proper land office the plat and field notes made under the direction of a surveyor general.

Dunphy, *In re*, 8 L. D. 102, p. 103.

4. SURVEY AND DESCRIPTION—MONUMENTS.

The locus of a mining claim should be fixed with mathematical accuracy as well in the report of the official surveyor as upon the surface of the earth.

Castner, *In re*, 17 L. D. 565, p. 567.

Wheeler v. Smith, 23 L. D. 395, p. 398.

Wright v. Sioux Consol. Min. Co., 29 L. D. 154, p. 156.

It is important to an applicant for patent for a mining claim and to the Government that the survey of the claim give a description, as required by the statute, by reference to natural objects or permanent monuments, so that an accurate description can be incorporated in the patent.

Sulphur Springs Quicksilver Mine, *In re*, 22 L. D. 715.

All surveys of mineral claims for which patent is sought must be connected to some corner of the public survey or with some mineral monument or permanent natural object.

Dodge, *In re*, 6 C. L. O. 122, p. 123.

Where one only of a group claim is connected to a public survey corner within the 2-mile limit and the remaining claims of such group are connected by tie lines more than 2 miles in length, an entry can only be permitted as to the one claim within 2 miles of the public survey corner.

Lloyd Searchlight Min., etc., Co., *In re*, 42 L. D. 485, p. 486.

Mineral monuments should be permanent, and a tree can not be considered a permanent natural object.

Cavanah, *In re*, 8 C. L. O. 5.

5. SURVEYOR GENERAL'S CERTIFICATE AS TO PLAT AND SURVEY.

A mineral claimant must file with the register a certificate of the surveyor general as to the correctness of the plat with such reference to natural objects or permanent monuments as will identify the claim and furnish an accurate description to be incorporated in the patent, and thereupon the register must give notice of the application.

McCarthy, In re, 14 L. D. 105, p. 107.

The regulations under this paragraph require the claimant to furnish a certificate of the surveyor general as to the correctness of the plat filed, and that the field notes of the survey furnish such accurate description of the claim as will serve to fully identify the premises if incorporated in a patent, and that reference is made therein to such natural objects or permanent monuments as will perpetuate and fix the locus of the claim.

Sinnott v. Jewett, 33 L. D. 91, p. 97.

This section requires a certificate from the surveyor general that the plat filed is correct, and an incorrect plat and notice will not be permitted to stand as sufficient while a fair opportunity remains for a satisfactory compliance with the law by a new publication.

Hagland, In re, 1 L. D. 593, p. 596.

The approval of the survey of a mining claim by the surveyor general is merely an indorsement thereon by him that the survey is correct and made in accordance with law.

The Orient, Occident & Union Tunnel Lodes, In re, 7 C. L. O. 51.

Hickey, In re, 9 C. L. O. 163.

A locator who has a mining claim located and recorded is entitled to the surveyor-general's approval of the survey and his certificate showing that the same was made in accordance with law.

Orient, Occident, & Other Mines, In re, 7 C. L. O. 82.

The failure of a placer claimant to file the certificate of a surveyor general prior to the expiration of the period of publication is not material.

Floyd v. Montgomery, 26 L. D. 122, p. 130.

On application for a patent for a mining claim an entryman should be given an opportunity to furnish supplemental proof, including an additional certificate of the surveyor general, showing full compliance with the requirements of the mining laws.

Spur Lode, In re, 4 L. D. 160, p. 162.

The certificate of the surveyor general as to the quantity of annual assessment work and as to the character of improvements upon a mining claim is subject to be examined by the department before patent is issued; but such certificate can not be impeached in the courts after patent issues.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 686.

The surveyor general makes the certificate required by this section on the reports furnished him by the deputy mineral surveyors, and for this reason they are prohibited from having any interest in the mining claim surveyed.

Waskey v. Hammer, 223 U. S. 85, p. 92.

The surveyor general has no jurisdiction in the matter of deciding titles.

Russell, In re, 5 C. L. O. 18.

Thor, Venus & Bright Point Mines, In re, 5 C. L. O. 51.

Orient, Occident & Union Tunnel Lodes, In re, 7 C. L. O. 51.

Mountaineer Min. Co., In re, 7 C. L. O. 101.

Santa Rita Mines, In re, 10 C. L. O. 3.

6. MONUMENTS CONTROL FIELD NOTES.

In running lines of the survey of a mining claim where the monuments called for are on the ground and there is found to be a variation between the field notes and the monuments, the latter must control, but in the absence of monuments the surveyor must be guided by the calls in the field notes.

Davis v. Tanner, 20 L. D. 220, p. 221.

Where there is a variance between the locus of a patented mining claim, as indicated by the tie line described in the patent from the corner of such claim to the corner of a public survey or a mineral monument, the Land Department will regard as constituting such patented claim the tract of land embraced in the survey and bounded by the lines actually marked and established on the ground by the required monuments and corresponding to their description in the patent.

Sinnott v. Jewett, 33 L. D. 91, p. 95.

Drogheda & West Monroe Extension Lode Min. Claim, In re, 33 L. D. 185.

7. CONNECTING SURVEY WITH PUBLIC SURVEY.

The requirement that a mining claim on or near surveyed land must be connected by a line of survey with a public survey corner is one of long standing and which the department will not waive.

Sulphur Springs Quicksilver Mine, In re, 22 L. D. 715, p. 716.

It is indispensable that a corner of each of group claims be tied within a reasonable distance to an established survey monument in order to secure accuracy of survey, a correct locus of the locations upon the ground, full notice to adverse claimants, and the correct description in the field notes and plats.

Lloyd Searchlight Min., etc., Co., In re, 42 L. D. 485, p. 487.

8. AMENDED SURVEY PERMITTED.

An amended survey may be permitted where the good faith of the entryman is not questioned and where the error of the deputy surveyor was inaccurate in locating a connecting line, but the claim was otherwise sufficiently identified.

Veta Grande Lode, In re, 6 L. D. 718.

The department may require an amended survey of a lode on a placer claim reducing its width to 25 feet on either side of the center of the lode.

Pike's Peak Lode, In re, 10 L. D. 200.

See Shonbar Lode, In re, 1 L. D. 551.

Shonbar Lode, In re, 3 L. D. 388.

Where an amended survey of a mining claim is required to be made within a specified period, the entry should not be canceled before a report from the surveyor general's office.

Quartzite Lode, In re, 26 L. D. 643, p. 646.

9. ERRORS IN SURVEY AND DESCRIPTION.

A defect consisting of an erroneous description in the survey of a connecting line will not defeat a mineral entry where the law has otherwise been substantially complied with and no adverse claim is filed, and where the mineral survey was made in accordance with the location notice and boundary stakes and embraced the identical land located.

Buena Vista Lode, In re, 6 L. D. 646, p. 647.

See Independent Quartz Mine Co., In re, 11 C. L. O. 227.

Childs, In re, 13 C. L. O. 53.

An error in the survey of a mining claim due to the register and not to the claimant may be cured by reference to the board of equitable adjudication.

Silver King Quartz Mine, In re, 11 L. D. 234, p. 235.

The locus of the initial point of a survey may be ignored where such initial point has been determined and fixed by actual survey of a tie line connecting it with an established corner of the public survey, and if the course and distance of the tie line were so erroneous as to appear to establish the locus of the claim wholly outside of the boundaries as marked upon the ground, yet this will not permit a relocation within the boundaries where the proof identifies the claim as actually located upon the ground by the monuments called for and by the outcropping lode, discovery shaft, shaft house, and surface improvements.

Sinnott v. Jewett, 33 L. D. 91, p. 95.

See Cullacott v. Cash Gold, etc., Min. Co., 8 Colo. 179.

10. SURVEY OF ADVERSE CLAIM NECESSARY.

A survey must be made of the entire adverse claim, and a protestant will not be permitted to color a portion of the applicant's survey and treat it as his entire adverse claim.

Bates v. Chambers, 1 C. L. O. 97.

See City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.

11. JUNIOR SURVEY MUST SHOW CONFLICT.

A junior survey of mining claims, in case of conflicting surveys, should show the conflict with any prior survey.

Thor, Venus, & Bright Point Mines, In re, 5 C. L. O. 51, p. 52.

12. SURVEY INCORPORATED IN PATENT.

A survey of a mining claim is by law incorporated in the patent and is thus finally and permanently fixed.

McCarthy, In re, 14 L. D. 105, p. 108.

13. SURVEY ON PATENTED GROUND—EFFECT.

A mining claim legally located may be surveyed according to the lines of the location as marked on the ground, although the surveyed lines may in whole or in part fall upon patented lands, and such a survey would be lawful as a basis for patent if sufficient data be furnished thereby to enable the officers in issuing the patent to make proper exclusion of all previous patented lands embraced within such survey.

Monofraction Lode Min. Claim, In re, 31 L. D. 121, 122.

14. FAILURE OF CLAIMANT TO HAVE SURVEY—EFFECT.

The failure of a mineral claimant to have his claim surveyed and the boundaries marked as required by an order of the department warrants the conclusion that there is no conflict between his mining claim and a homestead claim as alleged by him.

Winters v. Bliss, 19 L. D. 287.

15. SURVEY AS EVIDENCE.

When a survey is procured it may be used in evidence by the claimant in his patent proceedings, though from its nature it is an ex parte proceeding in which the claimant alone is interested, but it prejudices the rights of no one and settles and decides nothing as regards the title of the claim.

Orient, Occident, & Other Mines, In re, 7 C. L. O. 82.

The statute makes the certificate of the surveyor general evidence as to the sufficiency of the work performed and improvements made upon any mining claims.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 685.

16. MONEY DEPOSITED FOR SURVEY—REFUNDING.

Money deposited to cover the cost of a survey of a mineral claim can not be refunded by the department after it has been turned into the Treasury in due course of business, but it may be applied on a new survey.

Dunphy, In re, 8 L. D. 102, p. 103.

See Allen, In re, 8 L. D. 140.

E. IMPROVEMENTS AND EXPENDITURES.

1. REQUIREMENTS AND PURPOSE.
2. NATURE AND SUFFICIENCY.
3. BENEFICIAL CHARACTER.
4. PARTICULAR IMPROVEMENTS AND BUILDINGS.
5. TIME OF MAKING.
6. EXPENDITURES OUTSIDE OF CLAIM.
7. EXPENDITURES FOR GROUP CLAIMS.
8. REGULATIONS AS TO EXPENDITURES ON GROUP CLAIMS.
9. APPORTIONMENT OF IMPROVEMENTS TO SEPARATE CLAIMS OF GROUP.
10. IMPROVEMENTS NOT APPORTIONED TO NONCONTIGUOUS CLAIMS.
11. EXPENDITURES FOR "PENDING YEAR"—MEANING.
12. SURVEYOR GENERAL'S CERTIFICATE AS TO WORK AND IMPROVEMENTS.
13. PROOF OF EXPENDITURES.
14. COST AS A BASIS OF CALCULATION.
15. TIME OF MAKING PROOFS.

1. REQUIREMENTS AND PURPOSE.

The requirement of this section as to the expenditure of the value of \$500 in labor and improvements is mandatory, and the failure to comply with the mandate of the statute is incurable so far as any patent proceedings already had are concerned.

Copper Glance Lode, In re, 29 L. D. 542, p. 546.

Stemmons v. Hess, 32 L. D. 220, p. 222.

This section makes the expenditure of \$500 in labor and improvements a condition to the issuance of patent, and therefore a matter between the applicant for patent and the Government the determination of which is committed to the Land Department.

Wolensberg, In re, 29 L. D. 302, p. 304.

Nielson v. Champagne Min., etc., Co., 29 L. D. 491, p. 492.

Copper Glance Lode, In re, 29 L. D. 542, p. 548.

Adams v. Polglase, 32 L. D. 477, p. 478.

Actual expenditures by the owner of a mine for which patent is sought are absolutely necessary.

Dodge, In re, 6 C. L. O. 122, p. 123.

The intention of Congress in requiring this expenditure was to evidence the good faith of parties seeking patent under the mineral laws and that by the labor done on:

the improvements made to the extent required it would be apparent that the land was mineral and subject to entry as such.

Milton v. Lamb, 22 L. D. 339, p. 340.

Two purposes, at least, of this and the preceding sections were to insure good faith in the location of a mining claim and to require the locator to exhibit a claim which would, by reason of its development or the improvements made for its benefit, be of some value, and Congress assumed that \$500 worth of labor or improvements would demonstrate its value as a mine.

Bishop v. Baisley, 28 Oreg. 119, p. 135.

Five hundred dollars in expenditures are required on each placer claim and not on each location in an application for patent.

Smith, In re, 7 C. L. O. 4.

If a locator or explorer deems the deposit of mineral of sufficient value to warrant the annual labor and expenditure required, he thereby shows his good faith, and a compliance with the other provisions of this section entitles him on application to entry and patent.

Tam v. Story, 21 L. D. 440, p. 442.

See Book v. Justice Min. Co., 58 Fed. 106.

The value of an ordinary mining claim is established by development and exploitation, and the mineral worth of such a claim is capricious and unstable.

Stinchfield v. Pierce, 19 L. D. 12, p. 14.

2. NATURE AND SUFFICIENCY.

See sec. 2324, pp. 236, 240.

In determining whether labor and improvements had upon a mining claim, or upon several claims held in common, are of such a character and are so situated that they may be properly used in the development of a claim or claims in common, and were so intended, is governed by the same principle under this and the preceding section.

Copper Glance Lode, In re, 29 L. D. 542, p. 548.

In any case at least \$500 shall have been expended to entitle the locator to a patent, though for a single location \$100 per year will protect his possessory right.

Good Return Min. Co., In re, 4 L. D. 221, p. 222.

McDonald v. Montana Wood Co., 14 Mont. 88, p. 91.

Where \$500 worth of labor has not been expended or improvements made in the development of a placer mine, it would not vitiate a placer location, though it might avoid an existing entry and prevent the issuance of a patent.

Draper v. Wells, 25 L. D. 550.

Floyd v. Montgomery, 26 L. D. 122, p. 129.

Improvements and expenditures of money on a mining claim under a prior location can not be credited to a subsequent location embracing the same ground.

Yankee Lode Claim, In re, 30 L. D. 289, p. 291.

Russell v. Wilson Creek Consol. Min., etc., Co., 30 L. D. 322, p. 324.

Tough Nut No. 2 and Other Lode Min. Claims, In re, 36 L. D. 9, p. 12.

The requirement of this section is that \$500 in labor or improvements shall be expended upon or for the benefit of a placer location for which patent is sought, and work performed for the benefit of a 20-acre location can not be utilized for the benefit of a maximum location of 160 acres by eight persons and which includes the original 20-acre location and the remainder of entirely new ground.

Head, In re, 40 L. D. 135, p. 137.

See Yard, In re, 38 L. D. 59.

A mining claim when amended is an entity, and it is not necessary that the improvements should be upon any particular part thereof, and a report as to the mineral character of the claim is sufficient in the absence of anything showing the want of bona fides on the part of the claimant or tending to show that the ground included by the amendment is valuable or is sought for any other than mining purposes.

Lincoln Placer, In re, 7 L. D. 81, p. 83.

No portion of a common improvement or system can be regarded as sustaining any relation under the statute to a claim or claims located after the construction of such portion of the improvement, notwithstanding the subsequent extension of the improvement so far as to represent an added value of not less than \$500 of every such additional claim upon such lines that the project as a whole is of the requisite benefit to all the claims of the group, and any such subsequent extension must in itself be common for all purposes to the prior as well as to the latest locations.

Aldebaran Min. Co., In re, 36 L. D. 551, p. 553.

See Caretto and Other Lode Claims, In re, 35 L. D. 361.

3. BENEFICIAL CHARACTER.

See sec. 2324, p. 246.

Labor or improvements, to be credited on a group of claims under this section, must actually promote, or directly tend to promote, the extraction of mineral from the land or facilitate the development of the claim as a mine or mining claim, or be necessary for its care or the protection of the mining works located thereon.

Highland Marie and Manilla Lode Min. Claim, In re, 31 L. D. 37, p. 38.

Smelting Co. v. Kemp, 104 U. S. 636, p. 655.

United States v. Iron Silver Min. Co., 24 Fed. 568.

Book v. Justice Min. Co., 58 Fed. 106, p. 117.

Copper Glance Lode, In re, 29 L. D. 542.

Zephyr, etc., Lode Min. Claims, In re, 30 L. D. 510, p. 513.

Monster Lode Min. Claim, In re, 35 L. D. 493, p. 494.

Doherty v. Morris, 17 Colo. 105.

Lockhart v. Rollins, 2 Idaho, 540 (503).

Where money or labor is expended in good faith in furtherance of a plan of development of a mining claim, the department will not go beyond the fact of such expenditures.

McCornick, In re, 40 L. D. 498, p. 503.

Hughes v. Ochsner, 26 L. D. 540, p. 543.

Labor and improvements within the meaning of this and the preceding section are deemed to have been had upon a mining claim, or upon several claims held in common, when the labor is performed or the improvements are made to facilitate the extraction of minerals from the claim or claims, though the labor and improvements may, in fact, be outside of the limits of any claim, but the claims must be adjoining or contiguous, so that each claim may be benefited by the work or improvements.

Copper Glance Lode, In re, 29 L. D. 542, pp. 548, 549.

Improvements made and for which credit is claimed must be, in fact, made upon the mining claim, or for its benefit, and it is not sufficient if they are shown to be upon conflicting ground and not for the benefit of the claim in the application.

Antediluvian Lode & Mill Site, In re, 8 L. D. 602.

Independence Lode, In re, 9 L. D. 571.

Lone Dane Lode, In re, 10 L. D. 53.

Hidden Treasure Lode, In re, 29 L. D. 156, p. 157.

This section requires the preliminary showing of work or expenditure on each location sufficient for the maintenance of possession under the preceding section, either by showing the full amount for the pending year, or, if there has been a failure to perform the work, that the work has been resumed in time to prevent relocation.

Good Return Min. Co., In re, 4 L. D. 221, p. 224.

Kinkaid, In re, 5 L. D. 25.

The Land Department has nothing to do with questions as to the performance of annual expenditure upon mining claims, nor of alleged relocations thereof by reason of failure to perform such expenditure under this section, as these questions are matters between adverse claimants to mineral lands and pertain only to the right of possession of the claim involved.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 207.

See *Barklage v. Russell*, 29 L. D. 401.

4. PARTICULAR IMPROVEMENTS AND BUILDINGS.

A quartz mill erected and used for the purpose of crushing ores from claims embraced in an application for patent can not be accepted as an improvement made for the benefit of such claims, within the meaning and intention of the statute.

Highland Marie & Manilla Lode Min. Claim, In re, 31 L. D. 37, p. 38.

A limekiln, for the purpose of reducing limestone, erected on a placer mining claim containing limestone deposit can not be accepted as a credit on the required expenditure for the benefit of the claim, as the operation of the kiln has nothing to do with the excavation of the material or the development of the mine.

Schirm-Carey & Other Placers, In re, 37 L. D. 371, p. 372.

See *Monster Lode Min. Claim*, In re, 35 L. D. 493.

A stamp mill erected upon a mining claim may be of benefit to the owner of the claim, but it in no way facilitates the extraction of mineral therefrom or contributes to its development as a mine; and while it may be of advantage to have a stamp mill upon the claim, yet such mill is not an active agency in the development of the mine, whether it is situated upon the claim or at some distance therefrom, and such mill has no connection with the operation of extracting mineral from the ground; its function begins only when the process of mining has ceased, and it can not be credited as an improvement for the benefit of the claims.

Monster Lode, In re, 35 L. D. 493, p. 495.

Fargo Group No. 2 Lode Claims, In re, 37 L. D. 404, p. 406.

See *Highland Marie & Manila Min. Claims*, In re, 31 L. D. 37.

There is no distinction as to their respective relation to actual mining operations between a stamp mill erected upon a mining claim for the purpose of crushing and treating the ore mined therefrom and a limekiln erected on a claim containing a deposit of limestone for the purpose of reducing its product from one chemical compound to another, and such limekiln can not be accepted as meeting the requirements of the statute as to the required expenditures.

Schirm-Carey and Other Placers, In re, 37 L. D. 371, p. 373.

See *Highland Marie & Manilla Min. Claims*, In re, 31 L. D. 37.

An expenditure made in drill holes placed upon a mining claim for the purpose of prospecting it in order to secure data upon which the further development work can be based may, with such improvements, meet the statutory provision requiring an expenditure of \$500 as a basis for patent.

McCornick, In re, 40 L. D. 498, p. 503.

5. TIME OF MAKING.

Improvements made after the expiration of the period of publication of a pending application for patent can not be considered on the question of the performance of the required statutory expenditure.

Wood Placer Min. Co., In re, 32 L. D. 401, p. 403.

The improvements relied upon which were inherently of a mining character and were completed long prior to the location of four claims of a group, and where no im-

provement had followed the location of these particular claims, is not sufficient to meet the requirements of the statute.

Aldebaran Min. Co., In re, 36 L. D. 551, p. 561.

See Tough Nut No. 2 Lode Claim, In re, 36 L. D. 9.

Where a mineral claimant has in good faith made valuable improvements upon his mining claim, and has, by reason of the exclusion of conflicting ground, lost the principal part in value of such improvements, he should be allowed a stated reasonable time after the expiration of the period of publication within which to make the necessary expenditure and to file the certificate of the surveyor general in proof of the same, with the view of subsequently submitting the entry to the board of equitable adjudication for its consideration.

Hidden Treasure Lode, In re, 29 L. D. 315, p. 316, modifying Hidden Treasure Lode, In re, 29 L. D. 156.

See Wells v. Draper, 25 L. D. 550.

Where it appears that sufficient time within which to develop the claim has not elapsed, an extension of time will be afforded, but the rule can not apply where a placer location has stood for over 15 years.

Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401, p. 409.

See Michie v. Gothberg, 30 L. D. 407.

Purtle v. Steffee, 31 L. D. 400.

6. EXPENDITURES OUTSIDE OF CLAIM.

See sec. 2324, p. 243.

Improvements made outside of the boundaries of a mining claim may be accepted as sufficient under this section if shown to aid in the extraction of mineral therefrom.

Emily Lode, In re, 6 L. D. 220.

Kirk v. Clark, 17 L. D. 190.

Highland Marie & Manilla Lode Min. Claims, In re, 31 L. D. 37.

Improvements made or money expended for labor upon one claim, or wholly outside of several claims held in common, are accepted in satisfaction of the statutory requirements only when the claims are contiguous and when such improvements tend to facilitate the extraction of the minerals contained in the claim.

Copper Glance Lode, In re, 29 L. D. 542, p. 548.

Cassel, In re, 32 L. D. 85, p. 87.

The rule that work done outside of a claim may be as available for holding the claim as if done within its boundaries only applies where the work has been done in whole or in part for the purpose of prospecting or developing the particular claim for which patent is applied for.

Trickey Placer, In re, 7 L. D. 52, p. 53.

See Chambers v. Harrington, 111 U. S. 350.

An expenditure made on the construction of a ditch outside the limits of a mining claim before it was located and not for the purpose of developing the claim can not be accepted in proof of the required expenditure.

Tam v. Story, 21 L. D. 440, p. 443.

See Trickey Placer, In re, 7 L. D. 52.

The cost and expense of the construction of such portions of wagon road used in the transportation of supplies and of ore to and from mining claims as are within the boundaries of a group of claims may be accepted in the direct proportion and development of such claim, but the connection between the outlying portions of such roads and approved mining operations or development is too remote to justify their acceptance as a credit as a part of the statutory expenditure.

Douglas and Other Lodes, In re, 34 L. D. 556, p. 559.

Fargo Group No. 2 Lode Claims, In re, 37 L. D. 404, p. 406.

Dolores Min. Co., In re, 15 C. L. O. 51.

See Copper Glance Lode, In re, 29 L. D. 542.

Highland Marie & Manilla Lode Min. Claim, In re, 31 L. D. 37.

Doherty v. Morris, 17 Colo. 105.

Hain v. Mattes, 34 Colo. 345, p. 353.

Money expended upon the construction of a wagon road can not be included in calculating the expenditure required by this section unless it is shown that the amount was expended on the road and within the exterior boundaries of the claim.

Alice Edith Lode, In re, 6 L. D. 711, p. 712.

Roadways having no connection whatever with actual mining operations conducted upon a group of claims can not be accredited under this statute to any of the claims.

Schirm-Carey & Other Placers, In re, 37 L. D. 371, p. 373.

An amount expended upon a wagon road can not be included in calculating the expenditure required by the statute, unless it is shown that the amount so included was expended on the road and within the exterior boundaries of the claim.

Dolores Min. Co., In re, 15 C. L. O. 51.

Where mineral exists in a practically continuous mass in the body of a mountain and extends under the surface of an entire group of claims embraced in a single entry, and it does not appear how tunnels projected away from and at a point high above the surface of certain excluded claims can in any manner aid in the extraction of mineral from such excluded claims, or could tend to promote their development, and where the tunnels, if continued, would not reach the deposit under the surface of such excluded claim, such tunnels can not be relied upon to satisfy the statutory requirement, and the cost and expense of the same can not be applied to the claims excluded from the entry.

Lawson Butte Consol. Mine, In re, 34 L. D. 655, p. 657.

7. EXPENDITURES FOR GROUP CLAIMS.

See sec. 2324, p. 245.

Applicants for patents for mining claims whose applications were passed to entry prior to July 1, 1898, and whose applications were prevented from being passed to entry by reason of protests or adverse claims, are only required to prove an expenditure of \$500 upon a group of claims sought to be patented.

Ferguson v. Hanson, 21 L. D. 336, p. 340.

B. P. O. E. Gold Min. Co., In re, 29 L. D. 605, p. 606.

Overruling Tenderfoot, etc., Lode, In re, 30 L. D. 200, p. 201.

Sweeney v. Northern Pacific R. Co., 20 L. D. 394, p. 395.

Larsen, In re, 10 C. L. O. 322.

Proof of an expenditure of \$500 upon a group of mining claims is sufficient on all applications passed to entry before July 1, 1898, and it is not necessary to show an expenditure of \$500 by the applicant upon each location embraced therein.

Hale, In re, 28 L. D. 524, p. 525.

Mayflower Gold Min. Co., In re, 29 L. D. 7, p. 9.

Gillis v. Downey, 29 L. D. 83, p. 85.

Brady v. Harris, 29 L. D. 89, p. 93.

See Brady v. Harris, 29 L. D. 426.

Where several contiguous mining claims are held in common and expenditures are made upon an improvement which is intended to aid in the development of such claims, and which is of such character as to redound to the benefit of all, such improvement is properly a common improvement, and in legal contemplation imports a single entity not subject to physical subdivision or apportionment in its application to the claims intended to be benefited, and the entire group is the beneficiary in such case, and the benefit accrues and is available for the claims as a body and not individually.

Carretto & Other Lode Claims, In re, 35 L. D. 361, p. 364.

Mountain Chief, etc., Lode Min. Claims, In re, 36 L. D. 100, p. 102.

Austin Manhattan Consol. Min. Co., In re, 42 L. D. 75, p. 77.

Where the required expenditure in labor and improvements is had on one of several contiguous claims held in common, the applicant for patent must show that such expenditure is intended to aid in the development of all the claims, and that the labor and improvements are of such a character as to benefit all; and if such labor and improvements are outside of any of such contiguous claims, then the applicant must show that such labor and improvements were intended to aid in the development of the claim and are of the character suitable to that purpose.

Copper Glance Lode, In re, 29 L. D. 542, p. 549.

Where there is an application for a patent for a mining claim consisting of several mining locations the applicant may show for the consolidated claim the expenditure specified by this section, but he must show upon each location the expenditures specified in section 2324 R. S.

Good Return Min. Co., In re, 4 L. D. 221.

Mackie, In re, 5 L. D. 199.

The value of work or improvements done for the development of several contiguous mining claims of a single ownership is available toward meeting the requirements of this section, as well as the value of all work or improvements which contribute toward the development of such claims, regardless of whether they were done or made for the purpose of annual representations of the claim or otherwise.

Zephyr, etc., Lode Min. Claims, In re, 30 L. D. 510, p. 514.

See Emily Lode, In re, 6 L. D. 220.

Kirk v. Clark, 17 L. D. 190.

Clark's Pocket Quartz Mine, In re, 27 L. D. 351.

Mining work done on one claim for the benefit of it and other adjoining claims, constituting a group with a common ownership, may be credited to such adjoining claims as well as the claim on which the work is actually done.

Clark's Pocket Quartz Mine, In re, 27 L. D. 351, p. 352.

Copper Glance Lode, In re, 29 L. D. 542, p. 548.

A scheme of successive development of the group of claims in the absence of an expenditure for the direct benefit of each is not within the spirit of the privilege accorded by the statute, as its does not directly tend to facilitate the extraction of mineral from each claim at the time the expenditure therefor is made.

Wood Placer Min. Co., In re, 32 L. D. 401, p. 403.

Where money or labor is expended in good faith in furtherance of a general plan of improvements for the common benefit of several locations, it will be sufficient; and the department will not undertake to determine whether the plan of development will be effective or not.

Hughes v. Ochsner, 26 L. D. 540, p. 543.

Hughes v. Ochsner, 27 L. D. 396, p. 397.

Where the mining claims within the legitimate scope of a common improvement project are included within the suit, and all others excluded, and the interests represented in such improvement are equal and undivided, and the collective claims are the beneficiaries, and the improvement in whole is the instrumentality effecting the common benefit, such improvement is sufficient to satisfy the statutory requirement.

Aldebaran Min. Co., In re, 36 L. D. 551, p. 559.

Overruling Mountain Chief Min. Claims, In re, 36 L. D. 100.

8. REGULATIONS AS TO EXPENDITURES ON GROUP CLAIMS.

Rule 53 of the mining regulations requires an applicant to file a certificate of the surveyor general to the effect that not less than \$500 worth of labor has been expended or improvements made upon each location embraced in his application, or if several locations are included, that an amount equal to \$500 for each location has been ex-

pended upon and for the benefit of the entire group; but as to all applications passed to entry before July 1, 1898, proof of an expenditure of \$500 upon the group will be sufficient, and it is not necessary to show an expenditure of that amount upon each claim.

Mining Regulations, In re, 28 L. D. 594, p. 603.

The proviso of rule 53 of the mining regulations embraces two classes of cases: 1. Applications for patent made and passed to entry prior to July 1, 1898. 2. Applications for patent though made before July 1, 1898, prevented from being passed to entry before that date by reason of protest or adverse claim.

B. P. O. E. Gold Min. Co., In re, 29 L. D. 605.

The proviso of rule 53 of the mining regulations has no reference to an application for a mineral patent embracing several claims held in common that did not pass to entry prior to July 1, 1898, where it is not shown that entry prior to that date was prevented either by protest or an adverse claim.

B. P. O. E. Min. Co., In re, 29 L. D. 605 p. 606.

Rule 53 of the mining regulations does not exempt an applicant for mineral patent from the necessary showing of the required expenditure where his application was not passed to entry prior to July 1, 1898, where by reason of his delay in making publication, the application could not have passed to entry prior to July 1, 1898.

Tenderfoot and Other Lodes, In re, 30 L. D. 200, p. 201.

9. APPORTIONMENT OF IMPROVEMENTS TO SEPARATE CLAIMS OF GROUP.

Each claim of a group is entitled to credit for its due share of the common improvement consisting of a tunnel constructed at great expense for the common benefit of several groups of claims.

Carretto and Other Lode Claims, In re, 35 L. D. 361, p. 366.

See Zephyr and Other Lode Min. Claims, In re, 30 L. D. 510.

Foolkiller Lode Claim, In re, 35 L. D. 595, p. 599.

Austin Manhattan Consol. Min. Co., In re, 42 L. D. 75, p. 77.

By a calculation based upon the number of contiguous claims in a group and upon the value of the common improvement, it may be readily ascertained whether the equivalent of the required expenditure in labor and improvement for the benefit of each claim is represented in such common improvement, and also what credit is available to such claims as are embraced in any particular patent proceeding.

Carretto and Other Lode Claims, In re, 35 L. D. 361, p. 365.

Mountain Chief and Other Lode Claims, In re, 36 L. D. 100, p. 103.

See Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 150.

Aldebaran Min. Co., In re, 36 L. D. 551, p. 553.

The owner of several contiguous mining claims has the right to have the due share of work or improvement, or its value, credited to the several members of the group of claims, and this is not in any way dependent upon his embracing them all in one application for patent; and if he complies with the mining laws in other respects he may apply for and enter them singly or in pairs, or otherwise, at his option without in any way impairing such right.

Zephyr and Other Lode Min. Claims, In re, 30 L. D. 510, p. 514.

Where a group of claims are contiguous, and there is a common ownership, and common improvements representing a total value sufficient for patent purposes for the number of claims involved, and if, for each claim located after the partial construction of such improvement, which may consist of a tunnel, and this has been subsequently extended so as to represent an added value of not less than \$500, each claim

is entitled to a share of the value of such common improvements in its entirety, and each may participate therein without distinction, and as to each the statutory requirement is satisfied.

Aldebaran Min. Co., 36 L. D. 551, p. 560.

Overruling Mountain Chief Claims, In re, 36 L. D. 100.

Where large sums have been expended in developing and working for the benefit of several claims the proof must show what part of the labor or improvements were properly to be credited to the respective locations included in the application.

Nil Desperandum Placer, In re, 10 L. D. 198. p. 199.

A physical segment or fractional portion of an improvement constructed for the common development of a group of mining claims can not be arbitrarily applied to any particular claim or claims of the group; and this rule applies to a tunnel constructed as a common improvement.

Copper Glance Lode, In re, 29 L. D. 542, p. 550.

Aldebaran Min. Co., In re, 36 L. D. 551, p. 555.

A mining claim or location, which is a member of a group of claims with a single ownership, does not cease to be thereafter a beneficiary of any work or improvements in proceedings for patent therefor simply because such claim or location is not embraced in the first proceedings for patent to one or more locations in the group in which part of such work or improvement is duly credited.

Zephyr and Other Lode Min. Claims, In re, 30 L. D. 510, p. 514.

To undertake to set apart or apportion a physical segment or section, or an arbitrary fractional part of a common improvement, and to credit the value thereof to a particular mining claim is in violation of the theory of a common benefit accruing from a common improvement.

Carretto and Other Lode Claims, In re, 35 L. D. 361, p. 365.

Mountain Chief, etc., Lode Min. Claims, In re, 36 L. D. 100, p. 103.

The owner of a group of contiguous mining claims and of an improvement constructed for their common development, and which is effective to that end, and of sufficient value for patent purposes as to the entire group, may apply for and obtain patent to a portion of such claim based upon their due share or interest in the common improvement, and any subsequent break in the common ownership, by sale or otherwise, of one or more of the patented claims will furnish no bar to later patent proceedings for the remaining claims of the group based upon their due share or interest in the common improvement, and the fact that patent for all of the claims was not applied for at one time can make no difference.

Zephyr and Other Lode Min. Claims, In re, 30 L. D. 510.

Mountain Chief Lode Claim, In re, 36 L. D. 100.

Aldebaran Min. Co., In re, 36 L. D. 551, p. 554.

10. IMPROVEMENTS NOT APPORTIONED TO NONCONTIGUOUS CLAIMS.

Labor or improvements intended for the common benefit of several noncontiguous mining claims can not be apportioned to the different claims in satisfaction of the required expenditure thereon.

Copper Glance Lode, In re, 29 L. D. 542, p. 549.

See Yankee Lode Claim, In re, 30 L. D. 289.

As the law makes no provision for the apportionment of an improvement made for the common benefit of several noncontiguous mining claims, so as to apply different parts thereof conclusively to the use of different individual claims, expenditures made in the construction of a road and in the erection of a smelting furnace for the benefit and improvement of nine separate claims can not be apportioned to the sepa-

rate claims and the one-ninth part thereof credited to each as a part of the required expenditure.

Copper Glance Lode, *In re*, 29 L. D. 542, p. 550.
See Yankee Lode Claim, *In re*, 30 L. D. 289.

11. EXPENDITURES FOR "PENDING YEAR"—MEANING.

The words "the pending year," used in the circular of December 15, 1885, means the calendar year in which application is made for a patent.

Kinkaid, *In re*, 5 L. D. 25.
Good Return Min. Co., *In re*, 4 L. D. 221.

The full amount of work for the pending year means an amount of work sufficient to make the claim a valid and subsisting one at the date of the filing of an application for patent, and if there has been a failure to perform the work in any year, then it must be shown that the work has been resumed so as to prevent a relocation by other persons.

Kinkaid, *In re*, 5 L. D. 25.

An applicant for patent for a mining claim must show an expenditure upon each location sufficient to maintain possession under section 2324, either by showing the full amount for the pending year, or, in case of failure, that work has been resumed so as to prevent relocation.

Kinkaid, *In re*, 5 L. D. 25.

The performance of the required annual assessment work is not a condition to obtaining a patent, but is only a condition to the continued right of possession to an unpatented claim as against other and adverse claimants.

Hughes v. Ochsner, 27 L. D. 396, p. 398.
Opie v. Auburn Gold Min., etc., Co., 29 L. D. 230.
See Wolenberg, *In re*, 29 L. D. 302, p. 304.

This section requires the preliminary showing of work or expenditure upon each location, sufficient to the maintenance of possession under the preceding section, either by showing the full amount for the pending year, or if there has been a failure it should be shown that work has been resumed so as to prevent relocation by adverse parties after abandonment.

Good Return Min. Co., *In re*, 4 L. D. 221.

12. SURVEYOR GENERAL'S CERTIFICATE AS TO WORK AND IMPROVEMENTS.

An applicant for a mineral patent must file with the register with his application, or within 60 days thereafter, a certificate of the surveyor general that \$500 worth of labor has been expended upon the claim.

United States v. King, 83 Fed. 188, p. 190.
White Cloud Copper Min. Co., *In re*, 22 L. D. 252, p. 253.
Hanson, *In re*, 38 L. D. 469, p. 471.
McCornick, *In re*, 40 L. D. 498, p. 501.
American Antimony Co., *In re*, 14 C. L. O. 209.

The statute makes it the duty of the mineral claimant to file the certificate of the surveyor general, and compliance with the statute in this particular is a prerequisite to the allowance of entry, and this duty is placed upon the mineral claimant; and it is no part of the duty of the local officers to see to the filing of such certificate.

Schlessenger, 29 L. D. 495, p. 496.

Where the statutory \$500 have been expended on a mining claim as entered, or in a tunnel run for the development of such claim, a certificate by the surveyor general

to that effect should be furnished showing fully and in detail the value of the improvements credited to the claim.

Little Pet Lode, In re, 4 L. D. 17, p. 18.

Antediluvian Lode and Mill Site, In re, 8 L. D. 602, p. 603.

Each applicant for patent for a mining claim, where the application is filed after July 1, 1898, must show by the certificate of the surveyor general that \$500 of labor has been performed on each claim of a group, or that work equal to \$500 for each claim has been performed for the benefit of the group.

B. P. O. E. Gold Min. Co., In re, 29 L. D. 605, p. 606.

See Nielson v. Champagne Min., etc., Co., 29 L. D. 491, p. 492.

If the applicant files with his application a certificate of the surveyor general that \$500 worth of labor has been expended or improvements made upon the claim, he has complied with this section, but the surveyor general should be satisfied as to the amount of work, and if in doubt may call in additional evidence.

Russell, In re, 5 C. L. O. 18.

A patent for a mining claim can not issue where the claimant fails to furnish, within the statutory period, a certificate of the United States surveyor general that \$500 worth of labor has been expended for improvements made upon the claim.

Little Pet Lode, In re, 4 L. D. 17.

The statutes make the certificate of the surveyor general evidence of the sufficiency of the work performed and the improvements made upon a mining claim.

United States v. King, 9 Mont. 75, p. 80.

The money expended or the improvements made must be certified by the surveyor general, but all these provisions have reference to a previous discovery.

Union Oil Co., In re, 23 L. D. 222, p. 223.

13. PROOF OF EXPENDITURES.

An applicant for a patent for a mining claim is required to furnish evidence that the statutory expenditure of \$500 in labor or improvements has been made upon the ground claimed.

Broad Ax Lode, In re, 22 L. D. 244, p. 245.

White Cloud Copper Min. Co., In re, 22 L. D. 252, p. 253.

Milton v. Lamb, 22 L. D. 339, p. 340.

See Emily Lode, In re, 6 L. D. 220.

Proof of five hundred dollars' worth of labor expended or improvements made upon a mining claim, as required by this section, is one of the conditions to obtaining a patent to a mining claim prior to the expiration of the period of publication of notice of application for patent.

Copper Glance Lode, In re, 29 L. D. 542, p. 544.

In an application for a patent for a mining claim the proof must show that the improvements have been made for the purpose of developing the particular claim applied for, but where there is no adverse claim the applicant may be permitted to furnish satisfactory evidence of the mineral character of the land, and of the value of the improvements placed thereon.

Smelting Co. v. Kemp, 104 U. S. 636, p. 655.

Downs, In re, 7 L. D. 71, p. 74.

See Andromeda Lode, In re, 13 L. D. 146, p. 147.

Lands returned as mineral by the surveyor general, and a certificate by him showing that \$650 had been expended upon a mining claim in labor and improvements, with other evidence showing an expenditure of more than \$500 in developing the claim, and that it was valuable as placer mining ground and had no special value for any other purpose, are sufficient proofs to establish the character of the land and dis-

covery of valuable placer mineral deposits therein and of the required expenditure in the development of the claim to warrant the issuance of a patent.

Meaderville Min., etc., Co. v. Raunheim, 29 L. D. 465, p. 466.

Proof of an expenditure of \$1,500 upon a tunnel run for the benefit of adjoining mines may be credited to the benefit of the claim embraced in the application where the applicants were to have an interest in such tunnel.

Willard, In re, 4 C. L. O. 67, p. 68.

The expenditure alone of \$500 on a mining claim, either in labor or improvements, or both, is not proof of a compliance with the requirements of this section, and mere proof that work done or improvements made on a claim is not a compliance with the statute unless such work is done or improvements made for the benefit of the claim in the development of its mineral resources.

Floyd v. Montgomery, 26 L. D. 122, p. 132.

An applicant for a patent is required to furnish proof of the character and value of labor and improvements made upon a mining claim in an application for a patent, but he is not responsible for false statements or affidavits made by witnesses.

United States v. King, 83 Fed. 188, p. 190.

This section requires, among other things, proof of the expenditure of \$500 upon the claim, and a person claiming a patent under the possession held under section 2332 R. S. is not exempted from the requirements of this section.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 121.

See *Barklage v. Russell*, 29 L. D. 401.

The burden of proof is upon a protestant to show that the annual work was not done, as the presumption is that the owner of a mining claim has complied with the legal requirements.

Dolles v. Hamberg Consol. Mines Co., 23 L. D. 267, p. 269.

This section only directs proof of expenditure to the amount of \$500 on the claim embraced in the application for patent by certificate of the surveyor general, but it does not require that this amount shall be expended on each individual original location in lieu of the amount already provided for by the preceding section.

Good Return Min. Co., In re, 4 L. D. 221, p. 225.

14. COST AS A BASIS OF CALCULATION.

See section. 2324, p. 238.

Cost is an element in establishing the value and while not conclusive strongly tends to establish the good faith of the claimant in making the required expenditures, as it can not reasonably be presumed that the locators of a mining claim will expend a large sum of money in its development if they did not believe that the work done was reasonably worth the amount expended.

Floyd v. Montgomery, 26 L. D. 122, p. 134.

The cost and expense of a tunnel improvement for the benefit of three of a group of claims, to which it is specifically accredited in the certificate of the deputy mineral surveyor, is unavailable as a satisfaction of the statutory expenditure to other claims of the group.

Douglas & Other Lodes, In re, 34 L. D. 556, p. 560.

15. TIME OF MAKING PROOFS.

The provisions of the statute as to the time when proof of expenditure in labor and improvements shall be filed is directory only, as it is for the information and guidance of the Government, and not for that of adverse parties, and proper proofs filed after

the expiration of the period of publication showing the proper expenditure made in due time may be considered.

Draper v. Wells, 25 L. D. 550, p. 554.

See Little Pet Lode, In re, 4 L. D. 17.

Milton v. Lamb, 22 L. D. 339.

Floyd v. Montgomery, 26 L. D. 122.

Nielson v. Champagne Min., etc., Co., 29 L. D. 491, p. 494.

Schlessenger, In re, 29 L. D. 495.

Proof of the required expenditure on a mining claim may be made under a new notice of application after the expiration of the first period of publication.

Rex Lode, In re, 29 L. D. 635, p. 636.

Affidavits showing the proper expenditure of \$500 in labor and improvements on the claim will be considered if filed after the expiration of the period, if they show that such labor and improvements were done or made within the proper period.

Draper v. Wells, 25 L. D. 550.

Floyd v. Montgomery, 26 L. D. 122, p. 130.

F. NOTICE OF APPLICATION FOR PATENT.

1. PURPOSE AND REASON.
2. THREE METHODS OF GIVING NOTICE—PLACES OF POSTING.
3. POSTING NOTICE ON CLAIM.
 - a. GENERAL REQUIREMENTS—SUFFICIENCY.
 - b. CONSPICUOUS PLACE—MEANING.
 - c. CONSPICUOUS PLACE—INSTANCES.
 - d. TIME OF POSTING NOTICE AND PLAT.
4. POSTING IN REGISTER'S OFFICE.
5. PUBLICATION IN NEWSPAPER.
 - a. DUTY OF REGISTER.
 - b. DESIGNATION—DISCRETION OF REGISTER.
 - c. NEAREST NEWSPAPER—MEANING AND DISCRETION.
 - d. SIXTY DAYS' PUBLICATION—NUMBER OF INSERTIONS.
 - e. COMPUTATION OF TIME—PROOF.
6. FORM AND SUFFICIENCY.
7. INSUFFICIENCY—INSTANCES.
8. EFFECT OF ERRORS IN NOTICE.
9. FAILURE TO GIVE NOTICE—EFFECT.
10. PROOF OF PUBLICATION AND POSTING PLAT.

1. PURPOSE AND REASON.

The object of the published notice is to afford all parties claiming adversely an opportunity to present their claim and the notice should sufficiently identify the claim for that purpose.

McCarthy, In re, 14 L. D. 105, p. 107.

Bretell v. Swift, 16 L. D. 178, p. 179.

Davidson v. Eliza Gold Min. Co., 28 L. D. 224, p. 225.

Davidson v. Eliza Gold Min. Co., 28 L. D. 550 (on review).

See Tomay v. Stewart, 1 L. D. 570.

The purpose of requiring the notice to be posted on the claim and in the local office and published in a newspaper is to give notice to persons having adverse claims of the pending application and these three methods must be pursued simultaneously so that if an adverse claimant did not get notice in one way he might in either of the others and the only object of the notice is to inform the world that the claimant is seeking to enter the land.

Byrne v. Slauson, 20 L. D. 43, p. 45.

Gowdy v. Kismet Gold Min. Co., 24 L. D. 191, p. 194.

The purpose of this provision of the statute requiring a publication of notice of an application for a patent is to diffuse information respecting the application for the patent in the vicinity of the claim and among those whose residence in that locality presupposes their interest in the claim or their knowledge of the same.

Tough Nut and Other Lode Claims, In re, 32 L. D. 359, p. 360.

Hallett & Hagburg Lodes, In re, 27 L. D. 104, p. 108.

Reed v. Bowron, 32 L. D. 383, p. 385.

Northern Pac. R. Co., In re, 32 L. D. 611, p. 614.

See Albemarle and Other Lode-Min. Claims, In re, 30 L. D. 74, p. 77.

The publication of notice of an application for a patent required by the statute is notice to all the world to present to the Land Office any adverse claim to such application and a failure to do so constitutes in law an admission of the truth of every fact covered by such application and the issuance of a patent pursuant to such application, and a failure to advise the same is as conclusive of the patentee's rights as if a contest in respect to such application had been initiated in the Land Office and subsequently adjudicated by a competent court in favor of the applicant, and in either case it is absolutely conclusive against all adverse claimants.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 545.

Overruling Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 108 Fed. 189.

See Richmond Min. Co. v. Rose, 114 U. S. 576.

Gwillim v. Donnellan, 115 U. S. 45.

Last Chance Min., etc., Co. v. Tyler Min. Co., 157 U. S. 683, p. 695.

Hamilton v. Southern Nev. Gold, etc., Min. Co., 33 Fed. 562.

The notice required by this section is a general notice to all persons who might from any cause claim any interest in the land, and a person claiming an interest is not entitled to personal notice.

Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 257.

Notice must be given by an applicant in order that conflicting locators may have an opportunity to file adverse claims and raise and try any issue as to priority or maintenance of possession.

Mackie, In re, 5 L. D. 199, p. 200.

The publication of notice of an application for a patent for mineral land is imperatively required, and the object is to notify persons having interest which might be adversely affected by the issuance of a patent and afford them opportunity and right to file adverse claims.

Preston, In re, 10 C. L. O. 34.

The notice of an application for a patent for mineral lands for which the statute provides is the notice that is required, and when such a notice is given all persons are charged with such notice and no one is permitted to say that he did not in fact have notice.

Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 875.

Publication of notice is the process bringing all adverse claimants into court, and if no adverse claim is presented it is conclusively presumed that none exists, and thereafter no third person has any rights or equities in the land.

Hunt v. Eureka Gulch Min. Co., 14 Colo. 451, p. 455.

Marshall Silver Min. Co. v. Kirtley, 12 Colo. 410, p. 416.

People v. District Court, 19 Colo. 343, p. 347.

The law and the regulations as to the giving of notice of application for patent of a mining claim is more elaborate than any other class of the public lands, and the reason is that mining claims are often located in regions remote from settlement where few people are to be found and none seldom reside permanently, and the law intended that full and adequate notice should be given to the world of the application and that those seeing the notices whether posted or published might from the contents thereof locate the claim.

Gowdy v. Kismet Gold Min. Co., 22 L. D. 624, p. 627.

See Parsons v. Ellis, 23 L. D. 504, p. 506.

Gowdy v. Kismet Gold Min. Co., 24 L. D. 191, p. 193.

The fact that an applicant bases his right to patent for a mining claim because he has held it for a period of time which satisfies the statute of limitations of his state will not excuse the publishing and posting of notice of his application.

Smith, In re, 7 C. L. O. 4.

2. THREE METHODS OF GIVING NOTICE—PLACES OF POSTING.

This section prescribes three concurrent methods of giving notice: (a) Posting by the mineral claimant of a copy of the plat on the claim, together with a notice of his application for patent, and filing an affidavit and copy of such notice in the Land Office; (b) publication by the register of the local office of notice of such application for a period of 60 days, in a newspaper published nearest the claim; and (c) posting by the register of such notice of application in his office for the same period.

Tilden v. Intervenor Min. Co., 1 L. D. 572.

The notice required by this section shall be concurrently given by three different methods, the object of which is to afford wide publicity of the applicant's patent proceedings in order that possible adverse claimants may seasonably come in and litigate the validity of their claims; and the statute directs that a copy of the plat and of the notice of the application for a patent shall be posted in a conspicuous place on the land.

Tom Moore Consol. Min. Co. v. Nesmith, 36 L. D. 199, p. 201.

This section does not require that a location notice shall be recorded, nor does it require that a notice shall be posted on the claim, but leaves these matters to the regulation of local laws.

Carter v. Bacigalupi, 83 Cal. 187, p. 188.

3. POSTING NOTICE ON CLAIM.

a. GENERAL REQUIREMENTS—SUFFICIENCY.

The department requires a claimant to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent, and this notice must give the date of posting, the name of the claimant, the name of the claim, mine, or lode, the mining district or county where the location is of record, or where the record may be found, the number of feet claimed along the vein with its supposed direction, and the number of feet claimed on the lode in each direction from the point of discovery, together with the names of adjoining claimants on the same or other lodes, or the names of the nearest claims.

Mimbres Min. Co., In re, 8 L. D. 457, p. 459.

Reed v. Bowron, 32 L. D. 383, p. 385.

This section is silent as to the contents of notice of application for a patent for a mining claim, but requires the applicant, before filing his application, to post a copy of the official plat of survey, together with a notice of such application for patent in a conspicuous place on the land, and upon the filing of the application with the plat, field notes, notices, and affidavits the register shall publish a notice for 60 days that such application has been made.

Hallett & Hamburg Lodes, In re, 27 L. D. 104, p. 108.

The notice of application required to be posted on a mining claim is an integral and essential part of the notice of application and is required to be contemporaneously posted for 60 days on the claim and in the local land office and to be published in a newspaper, and if any one of the three notices is insufficient, it renders them all valueless.

Gross v. Hughes, 29 L. D. 467, p. 469.

The posting in a conspicuous place on the land embraced in a plat of the claim, or claims in common, of a copy of such plat together with a notice of application for patent is, so far as posting upon the ground is concerned, all the law requires to entitle a mineral applicant to a patent to a group of contiguous lode mining claims held in common and embraced in his application.

Phoenix Gold Min. Co., In re, 40 L. D. 313, p. 314.

The posting of one copy of the notice and plat within the limits of a group embracing two or more contiguous mill sites is sufficient without posting a separate copy upon each claim.

Phoenix Gold Min. Co., In re, 40 L. D. 313, p. 315.

b. CONSPICUOUS PLACE—MEANING.

The posting of a plat and notice of application for a patent in a conspicuous place on a mining claim is one of the three statutory methods to be pursued simultaneously by which all persons are to have notice of the intention of the applicant to procure title to the land.

Ferguson v. Hanson, 21 L. D. 336, p. 339.

See *Byrne v. Slauson*, 20 L. D. 43.

The term conspicuous as used in this section means open to the view, or obvious to the eye, and easy to be seen, or plainly visible, or otherwise advertised in poster or placard form and so attached to something upon the land in the position that they can be read conveniently by the public without being removed.

Tom Moore v. Nesmith, 36 L. D. 199, p. 201.

Overruling Lonergan v. Shockley, 33 L. D. 238.

c. CONSPICUOUS PLACE—INSTANCES.

A shaft house is a most conspicuous object upon a mining claim and especially where there are no other improvements, and is a conspicuous place on a mining claim for the posting of a notice, and especially where there are no other improvements on the claim, and it is immaterial upon which particular side or part of the shaft house the notice is posted.

Gowdy v. Kismet Gold Min. Co., 22 L. D. 624, p. 626.

See *Louisville Lode Case*, In re, 1 L. D. 548.

Ferguson v. Hanson, 21 L. D. 336, p. 338.

Gowdy v. Kismet Gold Min. Co., 23 L. D. 319.

Gowdy v. Kismet Gold Min. Co., 24 L. D. 191.

Gowdy v. Kismet Gold Min. Co., 25 L. D. 216.

The posting of a notice on the inside of a shaft house is posting the notice in a conspicuous place as required by law, where in a locality it is the custom for notices to be so posted and miners are accustomed to look in such places for the desired information.

Johnson, In re, 9 C. L. O. 113.

The posting of plats and notices in open boxes about 2 feet square and 1 foot deep placed upon the ground with rocks around and on top of them for their support and to keep them in place, and located from 150 to 200 feet from the discovery shaft does not satisfy the statute, but indicates a studied effort on the part of the applicant to avoid a compliance with the law requiring the posting of the notices in a conspicuous place.

Ferguson v. Hanson, 21 L. D. 336, p. 337.

d. TIME OF POSTING NOTICE AND PLAT.

The posting of the notice of the copy of the plat, together with a notice of the application for a patent, shall be done before application is filed, and must be in a conspicuous place upon the lands embraced in the plat of survey, and it is sufficient where the plat of survey embraces the entire claim and the posting was made in a conspicuous place upon the land embraced in the plat, and the fact that the application subsequently filed relinquished and excluded the portion of the land embraced in the plat upon which the copy of the plat and the notice were posted does not vitiate the notice.

Hughes v. Gilbert, 2 L. D. 756, p. 757.

Pratt v. Avery, 7 L. D. 554, p. 555.

Gilbert, In re, 10 C. L. O. 256.

The posting as required by this section must be done before the filing of the application for patent, and the affidavit for proof of such posting must be filed before any proceedings may be had in the Land Office upon the application; and when these conditions have been met, the register must then publish a notice of application for a period of 60 days in a newspaper to be designated by him as published nearest to the claim and post such notice in his office for the same period, and if no adverse claim is filed within this period of publication, it may be assumed that none exists.

Mojave Min., etc., Co., v. Karma Min. Co., 34 L. D. 583.

4. POSTING IN REGISTER'S OFFICE.

The register is required to publish a notice of the application for a period of 60 days and to post such notice in his office for the 60-day period of publication.

Williams, In re, 17 L. D. 282, p. 284 (on review).

See *Great Western Lode Claim, In re*, 5 L. D. 510.

Tilden v. Intervenor Min. Co., 1 L. D. 572, p. 574.

The publication and posting of notice by a register is an indispensable prerequisite to the acquisition of patent to a mining claim.

Pocatello Gold, etc., Min. Co., In re, 42 L. D. 550, p. 552.

It is just as incumbent upon a register to post the notice of the application in his office during the entire period of publication as it is for him to publish notice of the application in a newspaper, or for the claimant to post a copy of the plat and notice upon his claim.

Tilden v. Intervenor Min. Co., 1 L. D. 572.

On the failure of the register to post a notice of publication in his office a republication must be made in accordance with the statute.

Williams, In re, 17 L. D. 282, p. 284.

5. PUBLICATION IN NEWSPAPER.

a. DUTY OF REGISTER.

When the proper application is made, the register of the Land Office is required to publish a notice of such application for a period of 60 days in a newspaper designated by him and to post such notice in his office for the same period.

Smelting Co. v. Kemp, 104 U. S. 636, p. 656.

The duty as to publication of notice is placed upon the register, and a claimant should not suffer from an insufficient compliance where the rights of others are not prejudiced.

Oro Placer Claim, 11 L. D. 457, p. 459.
See *Becker v. Sears*, 1 L. D. 575.

The burden should not be put upon a mineral claimant of proving affirmatively that the register properly discharged his duty with reference to publication of notice when the presumption is in favor of such conclusion.

Oro Placer Claim, In re, 11 L. D. 457, p. 459.

Under this section the publication of the notice of application for a patent and the designation of the newspaper in which the publication is to be made are acts required of the local officers, and as such acts are not ministerial in character a receiver is not authorized to designate the paper in which the notice should be published.

Waller, In re, 22 L. D. 318, p. 319.
See *Dean Richmond Lode*, In re, 1 L. D. 545.

An order for publication of notice for a patent for a mining claim is insufficient if it is signed by the receiver and not by the register.

Waller, In re, 20 L. D. 144.
See Waller, In re, 22 L. D. 318.

An order of the General Land Office dismissing a protest and requiring the mineral applicant to make a republication is equally binding upon both parties and must be so treated in all subsequent proceedings.

Waller, In re, 22 L. D. 318, p. 321.

b. DESIGNATION—DISCRETION OF REGISTER.

A register may exercise his official judgment as to whether or not a certain publication is a newspaper within the meaning of the statute, and he may designate any newspaper which will effect the object of the publication unless his decision is arbitrary or manifestly in violation of the statute.

Bretell v. Swift, 16 L. D. 178, p. 179.
Tomay v. Stewart, 1 L. D. 570.
Arnold, In re, 2 L. D. 758.
Erie Lode v. Cameron Lode, 10 L. D. 655, p. 657.
Condon v. Mammoth Min. Co., 15 L. D. 330, p. 332.
See *Condon v. Mammoth Min. Co.*, 14 L. D. 138.

In the matter of giving a notice as required by this section the register has some discretion as to the designation of the newspaper, as to its established character as such and its stability and general circulation.

Bretell v. Swift, 17 L. D. 558, p. 560.

The register of the local office is invested with discretion in the matter of the selection of a newspaper in which to publish notice of an application for patent for a mining claim, but his discretion is subject to control, and the object of this discretion is to carry into effect the purpose of the statute itself.

Pikes Peak and Other Lodes, In re, 34 L. D. 281, p. 284.

An applicant for a mining claim is not at fault if the register makes an erroneous designation of a newspaper for publication of his notice.

Stewart, In re, 8 C. L. O. 155, p. 156.

The purpose of the section demands its practical application, and the distance in contemplation is that which must actually be traveled to bring the newspaper in the neighborhood of the claim, in order that the intended office of the notice may in that vicinity be performed.

Pikes Peak and Other Lodes, In re, 34 L. D. 281, p. 286.

A publication required under this section can not be changed from a daily to a weekly newspaper without the authority of the register.

Cannon, *In re*, 3 C. L. O. 18.

C. NEAREST NEWSPAPER—MEANING AND DISCRETION.

The notice of application for a mineral patent must be published in the newspaper nearest to the claim, and if not so done it is not a legal notice within the meaning of this section and will not prevent the filing of an adverse claim.

Condon v. Mammoth Min. Co., 14 L. D. 138, p. 139.

Bretell v. Swift, 14 L. D. 697, p. 698.

The register has no discretion under the law to designate any other than the newspaper nearest the land for the publication of the notice when such paper is a newspaper of general circulation.

Tough Nut and Other Lode Claims, *In re*, 32 L. D. 359, p. 361.

This section means that the register shall publish the notice of the application in a paper to be by him designated as being a newspaper published nearest to the claim not by actual measurement in a direct line between newspaper offices in the same town or city, but in the nearest town or city in which a paper or papers of established character and general circulation is published.

Condon v. Mammoth Min. Co., 15 L. D. 330, p. 333.

Pike's Peak and Other Lodes, *In re*, 34 L. D. 281, p. 285.

The publication in a newspaper designated by the register as being the one published nearest to such claim is sufficient.

Opie v. Auburn Gold Min., etc., Co., 29 L. D. 230, p. 232.

The register shall publish the notice of an application for a mining claim in the paper designated by him as the newspaper published in the town or city nearest to the mining claim, and when several newspapers are published in the same town the register may designate the one which will best subserve the public interests and give the widest notice to the public, and in this respect the register has a discretion which is subject to review and control in case it is abused.

Trippe, *In re*, 40 L. D. 190, p. 192.

Condon v. Mammoth Min. Co., 15 L. D. 330.

Bretell v. Swift, 17 L. D. 558, p. 560.

Tough Nut and Other Lode Claims, 32 L. D. 359, pp. 360, 361.

Pike's Peak and Other Lodes, *In re*, 34 L. D. 281, p. 286.

The notice of application required by this section must be published in a newspaper nearest to the land and the register is vested with discretionary power to determine the newspaper that is published nearest to the land, but this discretion is subject to review, and if abused, to correction by the officers of the Land Department.

Tough Nut and Other Lode Claims, *In re*, 32 L. D. 359.

Northern Pac. R. Co., *In re*, 32 L. D. 611, p. 614.

By the newspaper published nearest a mining claim within the contemplation of this section is meant the nearest in point of practical accessibility, that is nearest by the distance from the claim involved over the most direct traversable route and over which the editions are or may be transported by the usual and available means of conveyance.

Pike's Peak and Other Lodes, *In re*, 34 L. D. 281, p. 286.

Where newspapers are published practically equidistant from the location of a claim the selection of any such paper for the publication of the notice rests entirely with the register of the Land Office.

Arnold, *In re*, 2 L. D. 758, p. 759.

See Omaha Quartz Mine, *In re*, 3 C. L. O. 36.

This section vests a discretion in the register as to papers published at unequal distances from the mining claim and he may exercise his official judgment in designating a paper which is not in fact the one published nearest the mining claim under certain circumstances.

Arnold, In re, 2 L. D. 758.

See Tomay v. Stewart, 1 L. D. 570.

The legal discretion of the register as to the publication in the nearest newspaper of the notice of an application of a mineral claimant is subject to review by the General Land Office and the department.

Condon v. Mammoth Min. Co., 15 L. D. 330, p. 334.

The register in the exercise of the discretion lodged in him must determine what is a newspaper and whether it is of established character and general circulation where it is actually published, its circulation in the vicinity of the mining claim involved as compared with like circulation of other papers of equal standing in other respects, and which among them is published nearest the claim according to the distance necessary to be covered by each to reach the neighborhood of such claim.

Peak's Peak & Other Lodes, In re, 34 L. D. 281, p. 286.

d. SIXTY DAYS' PUBLICATION—NUMBER OF INSERTIONS.

Upon filing of the application with the plat, field notes, and notices the register shall publish notice of the application for a period of 60 days in some newspaper designated as published nearest to the claim and shall post such notice in his office for the same period.

Bretell v. Swift, 17 L. D. 558, p. 560.

See Condon v. Mammoth Min. Co., 15 L. D. 330.

This section requires a newspaper publication for a period of 60 days as notice of application for mineral patents, and if no adverse claim is filed within that time it will be assumed that the applicant is entitled to patent.

Bonesell v. McNider, 13 L. D. 286.

Waterhouse v. Scott, 13 L. D. 718, p. 719.

Draper v. Wells, 25 L. D. 550, p. 552.

Miner v. Marriott, 2 L. D. 709.

This section does not require more than 60 days' publication of the notice of an application for a patent for a mining claim and it does not authorize or permit the filing of an adverse claim after that date.

Davidson v. Eliza Gold Min. Co., 28 L. D. 224, p. 225.

Davidson v. Eliza Gold Min. Co. (on review), 28 L. D. 550.

Opie v. Auburn Gold Min., etc., Co., 29 L. D. 230.

This section governs the publication of notice of an application for a patent to a mining claim and a notice published in a weekly newspaper by insertion in successive issues covering a space of more than 60 days, and each of the first eight insertions is a publication not merely for the day upon which the paper was issued but also for the period intervening before the next regular issue of the paper, and the ninth insertion is a continuing publication of the notice for so much of the statutory period of 60 days as was not covered by the preceding eight insertions.

Davidson v. Eliza Gold Min. Co., 28 L. D. 224.

Davidson v. Eliza Gold Min. Co., 28 L. D. 550.

Overruling Miner v. Marriott, 2 L. D. 709.

The statute provides that notice will be published for the period of 60 days and the department is not authorized to require publication for a longer time, and when the

notice has been inserted in nine successive issues in a weekly newspaper and the full period of 60 days has elapsed the publication is complete.

Davidson v. Eliza Gold Min., Co. 28 L. D. 224, p. 225.

Davidson v. Eliza Gold Min. Co., 28 L. D. 550 (on review).

Opie v. Auburn Gold Min., etc., Co., 29 L. D. 230, p. 231.

The publication of the notice of application required by this section if made in a weekly newspaper must be in nine consecutive issues, and the first day of the issue must be excluded in the computation of time.

J. C. S. Min. Co., In re, 41 L. D. 369, p. 370.

This section does not direct a publication once a week for eight weeks or two months, but for a certain period of 60 days, and the publication may undoubtedly be made in a paper published weekly but it must cover the full period named and the difference between the first and the last insertions must include the full period of 60 days.

Seymour v. Woods, 4 C. L. O. 82.

See *McMurdy v. Streeter*, 1 C. L. O. 34.

The rule requiring 10 insertions of the notice of application for a patent published in a weekly newspaper is inconsistent with this section of the statute, and the notice is sufficient when inserted in 9 successive issues of a weekly newspaper and the full statutory period of 60 days has elapsed.

Tenderfoot, etc., Lodes, In re, 30 L. D. 200, p. 201.

Overruling Oro Placer Claim, In re, 11 L. D. 457, p. 459.

Nettie Lode v. Texas Lode, 14 L. D. 180.

Miner v. Mariott, 2 L. D. 709.

Philadelphia Min. Co. v. Finley, 10 C. L. O. 340.

Hunt v. Eureka Gulch Min. Co., 14 Colo. 451, p. 456.

Great Western Lode Claim, In re, 5 L. D. 510.

It is not within the power of an applicant for patent to extend or abridge the period of publication and the time in which an adverse claim must be filed, as the statute in this particular is mandatory.

Morrison v. Lincoln Min. Co., 6 C. L. O. 105.

If the publication of the notice of application is in a triweekly paper it must appear in each issue for 60 days, and a publication in such a newspaper for nine issues is insufficient.

J. C. S. Mining Co., In re, 41 L. D. 369, p. 370.

The publication of the notice of application required by this section and by the mining regulations must appear, when made in a daily newspaper, in each issue for 61 consecutive issues, excluding the first day of issue.

J. C. S. Mining Co., In re, 41 L. D. 369, p. 370.

e. COMPUTATION OF TIME—PROOF.

In computing the time for a published notice under this section the first day of publication should be excluded and the last day included.

Bonesell v. McNider, 13 L. D. 286.

Nettie Lode v. Texas Lode, 14 L. D. 180.

Cannon, In re, 3 C. L. O. 18, p. 19.

Jenny Lind Min. Co. v. Eureka Min. Co., Copp's Min. Lands 124.

See *Miner v. Mariott*, 2 L. D. 709.

Waterhouse v. Scott, 13 L. D. 718.

The 60 days within which an adverse claim may be filed is computed from the time when notice has been given by all the modes required.

Great Western Lode Claim, In re, 5 L. D. 510.

The first day of the statutory period of publication may be counted without violating the law if equity demands it, and this rule will not avail an applicant if it does not bring his claim within the time.

Bonesell v. McNider, 13 L. D. 286, p. 287.

Where the first publication in a weekly newspaper was January 16, and the tenth or last publication was March 20, this was notice that March 20 was the sixty-third day from January 16, and March 17 was the sixtieth and last day upon which an adverse claim could be filed, and a claim filed on March 19 is too late.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 181.

This section requires the notice to be published for a period of 60 days, and no exclusion is made of Sundays or holidays, and at the expiration of the 60 days, whether it falls on Sunday or any other day of the week, the period of publication is at an end, and an adverse claim filed after the sixtieth day is not within this period, and the Land Department has no authority to extend the period of publication, and if the sixtieth day falls on Sunday an adverse claim can not be filed on the Monday following.

Holman v. Central Montana Mines Co., 34 L. D. 568, p. 572.

See Gross v. Hughes, 29 L. D. 467.

Overruling Ground Hog Lode v. Parole & Morning Star Lodes, 8 L. D. 430.

The 60-day period for the publication of notice of application for patent commences to run from the date of the first publication, and in the absence of any showing when the first publication of notice was made the presumption will not be indulged that the first publication was made upon the same date of the filing of the application.

Helbert v. Tatem, 34 Mont. 3, p. 5.

6. FORM AND SUFFICIENCY.

The notice required by this statute must be complete in itself and accurately describing the character and extent of the right claimed and pointing out the property applied for, and on such notice third parties have a right to rely, and they are not concluded if it is erroneous.

Newport Lode, In re, 6 L. D. 546, p. 547.

The notice of application for a mineral patent as posted and published should contain such matter as will inform a man of ordinary intelligence and prudence, having an interest in a mining location conflicting with the one applied for, that application is made for a patent to the ground included, giving him an opportunity to file and prosecute an adverse claim and assert his rights as provided for.

Hallett & Hamburg Lodes, In re, 27 L. D. 104, p. 108.

McFadden v. Mountain View Min., etc., Co., 27 L. D. 358, p. 361.

Gowdy v. Connell, 28 L. D. 240, p. 241.

Holman v. Central Montana Mines Co., 34 L. D. 568, p. 571.

Where the notice of an application for a patent to a mining claim taken as a whole contains sufficient correct data to enable anyone interested to ascertain with accuracy the positions of the claim and to satisfy the legal requirements, it will be sufficient notwithstanding the failure to note all conflicting or adjoining claims.

Lonergan v. Shockley, 33 L. D. 238, p. 240.

See Neilson v. Champagne Min., etc., Co., 29 L. D. 491.

The notice of an application for patent posted upon the mining claim should give the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat of survey, and the published notice must embrace all the data given in the notice posted upon the claim.

Holman v. Central Montana Mines Co., 34 L. D. 568, p. 571.

The published notice of an application for patent should designate with substantial accuracy the location of the claim and should contain such matter as will inform a man of ordinary prudence having an interest in the mining location in conflict with the one applied for that application is made and give him an opportunity to protect his rights.

Peck, In re, 34 L. D. 682, p. 684.

A notice of an application for patent for a mining claim should state the names of adjoining or of the nearest claim if there is nothing else by which the claim can be identified, and it should state where the record of the claim can be found.

Gowdy v. Kismet Gold Min. Co., 22 L. D. 624, p. 627.

See Parsons v. Ellis, 23 L. D. 69.

Gowdy v. Kismet Gold Min. Co., 24 L. D. 191.

Gladys A. Min. Co. v. Gross, 24 L. D. 349.

Hallett & Hamburg Lodes, In re, 27 L. D. 104.

Mutual Min., etc., Co. v. Currency Co., 27 L. D. 191, p. 192.

Diamond v. Kahn, 28 L. D. 229, p. 230.

The notice required by this section is sufficient where it identifies natural objects which, combined with stated measurements, enable the boundaries of the claim to be readily traced.

McKinley Creek Min. Co. v. Alaska United Min. Co., 183 U. S. 563, p. 570.

The notice of an application for a patent for a mining claim must give the course and length of the line connecting the claim with the corner of the public surveys or with a mineral monument and must describe the claim so that it can be ascertained by a person having the right to adverse the claim.

Emperor Wilhelm Lode, In re, 5 L. D. 685, p. 686.

It is the intentment of this section that the plat and field notes of the survey of a mining claim shall constitute the essential part of the notice of application for patent, and unless the notice is full and accurate parties having adverse claims may be misled to their loss and the beneficial purpose and end of the notice fail of attainment.

Sulphur Springs Quicksilver Mine, In re, 22 L. D. 715.

Where the locus of a mining claim is sufficiently shown, the department will not order a new publication and posting and improvements.

Childs, In re, 10 L. D. 173, p. 176.

A notice of an application for a patent for a mining claim must be taken as a whole and when so taken, if it points out the ground applied for, it is sufficient, and a mistake in the description which is impossible, will not make the notice defective.

Hallett & Hamburg Lodes, In re, 27 L. D. 104, p. 110.

Gowdy v. Connell, 28 L. D. 240, p. 241.

Opie v. Auburn Gold Min., etc., Co., 29 L. D. 230, p. 232.

Neilson v. Champagne Min., etc., Co., 29 L. D. 491, p. 494.

Suburban Gold Min., etc., Co. v. Gibberd, 29 L. D. 558, p. 560.

See Wax, In re, 29 L. D. 592.

The notice of application for a mineral patent which substantially complies with the law and the regulations in force at the time it is given must be held sufficient to carry the claim to patent if the claimant has complied with the law in other respects.

French Lode, In re, 22 L. D. 675, p. 676.

A publication of a notice of an application for a mineral patent made in accordance with the practice of the department at the time, and prior to a decision changing the rule with reference thereto, is sufficient.

Diamond v. Kahn, 28 L. D. 229, p. 230.

See Gowdy v. Kismet Gold Min. Co., 24 L. D. 191.

Gowdy v. Kismet Gold Min. Co., 22 L. D. 624.

The published and posted notices of an application for patent for a mining claim are not required to contain a description of the lode line.

Beik v. Nickerson, 29 L. D. 662, p. 665.

The three notices required must correspond and are sufficient if free from such error as is calculated to mislead a person of ordinary prudence and intelligence.

Suburban Gold Min., etc., Co. v. Gibberd, 29 L. D. 558, p. 560.

The published notice of an application for patent to a mining claim must substantially conform to the notice as posted upon the claim, and should contain sufficient data to put interested persons of ordinary intelligence upon inquiry and to enable any persons to ascertain with accuracy the position of the claim.

Reed v. Bowron, 32 L. D. 383, p. 385.

Juno and Other Lode Claims, In re, 37 L. D. 365, p. 368.

See Hallett & Hamburg Lodes, In re, 27 L. D. 104, p. 108.

Neither the mining laws nor the regulations of the department require the published notice of an application for patent by a corporation to designate the State or Territory in which the corporation was organized.

Holman v. Central Montana Mines Co., 34 L. D. 568, p. 571.

A notice of an application for a patent to a mining claim must contain the exact data relating to the claim, as these are to be repeated in the other notices required, and upon the accuracy and completeness of these notices will depend largely the regularity and validity of the proceedings for patent.

Richmond and Other Lode Claims, In re, 34 L. D. 554, p. 556.

Though a location notice fails to give an accurate description of the premises located, yet it is sufficient if the deputy surveyor reports that the survey embraces and covers the line of the lode.

Russell, In re, 5 C. L. O. 18.

The fact that a published notice of an application for patent for a mining claim does not give the names of adjoining claims will not render the notice insufficient where it gives the numbers of such claims.

Whitman v. Haltenhoff, 19 L. D. 245, p. 246.

Johnson, In re, 9 C. L. O. 113.

See Gowdy v. Kismet Gold Min. Co., 25 L. D. 216, p. 220.

Gowdy v. Connell, 27 L. D. 56, p. 57.

Under this section it is not necessary to give the names of all adjoining and conflicting locations or claims in the notice of application for patent, but only such as are shown in the plat of the surveyor.

Ellison, In re, 29 L. D. 250.

In the survey of a mining claim the omission in the published notice of the line directly connecting the claim with a mineral monument is immaterial where the notice shows the claim is sufficiently connected with such monument by being connected with the corner of a town site and also with the corner of a patented placer claim.

McCarthy, In re, 14 L. D. 294.

See McCarthy, In re, 14 L. D. 105.

Notice of an application for patent for a mining claim to one part owner of a conflicting claim is notice to all the owners of such claim.

Bretell v. Swift, 17 L. D. 558, p. 560.

The proceedings for a patent to a mining claim is notice to the world, and knowledge of its issuance will be imputed to a person claiming an interest in the mine, and he will not be permitted to attack the patent after an unexplained delay of 30 years.

Socrates Quicksilver Mines v. Carr Realty Co., 130 Fed. 293, p. 297.

7. INSUFFICIENCY—INSTANCES.

Congress intended that notice of a claim should be given to adverse claimants and to the public by means of a published notice, and if the notice is defective or erroneous neither the letter nor the intention of the law is carried out.

Hoffman v. Venard, 14 L. D. 45, p. 46.

Where a public notice is defective and uncertain in essential matters of description and in failing to designate with substantial accuracy the locus of the claims upon the ground, it is fatally defective.

Juno and Other Lode Min. Claims, In re 37 L. D. 365, p. 369.

Batterton v. Douglas Min. Co., 20 Idaho 760, p. 763.

See *Hallett & Hamburg Lodes*, In re, 27 L. D. 104.

Highland Marie & Manila Lode Min. Claims, In re, 31 L. D. 37.

Carmack Gold, etc., Co., In re (unreported), July 28, 1909.

A notice of application for mineral patent which shows no connection with a mineral monument or the corner of the public survey is fatally defective.

Juno and Other Lode Claims, In re, 37 L. D. 365, p. 368.

See *Wax*, In re, 29 L. D. 592.

The failure of an applicant for a mineral patent to state in the notice of his application the adjoining claims, or to give the official survey number of such adjoining land, is fatal.

Gowdy v. Connell, 27 L. D. 56, p. 57.

See *Whitman v. Haltenhoff*, 19 L. D. 245, p. 246.

A notice of an application for patent for a mining claim is not sufficient unless it contains data sufficient to indicate the situation of the claim with substantial accuracy.

Sinnott v. Jewett, 33 L. D. 91, p. 99.

See *Hallett & Hamburg Lodes*, In re, 27 L. D. 104.

A notice which fails to give any connection line is insufficient and is not a case of mere irregularity which can be cured by supplemental proceedings.

Juno and Other Lode Claims In re, 37 L. D. 365, p. 368.

See *Southern Cross Gold Min. Co. v. Sexton*, 31 L. D. 415.

Southern Cross Gold Min. Co. v. Sexton, 147 Cal. 758.

If when taken as a whole the notice does not appear to contain sufficient correct data to put persons of ordinary intelligence and prudence interested in the land applied for upon inquiry and to enable such persons to ascertain with accuracy the position of the claim, then it fails to comply with the statutory requirements and is insufficient.

Reed v. Bowron, 32 L. D. 383, p. 385.

See *Hallett & Hamburg Lodes*, In re, 27 L. D. 104, p. 110.

The notice of an application for patent for a mining claim is insufficient where it informs the public that the applicant will apply for a patent upon a claim of a certain name and description in a certain named county, when the claim is, in fact, located in a different county.

Wright v. Sioux Consol. Min. Co., 29 L. D. 154, p. 156.

Wright v. Sioux Consol. Min. Co., 29 L. D. 289 (on review).

A defective publication is properly chargeable to the register and may be cured by reference to the board of equitable adjudication.

Oro Placer Claim, In re, 11 L. D. 457, p. 459.

See *Mimbres Min. Co.*, In re, 8 L. D. 457.

8. EFFECT OF ERRORS IN NOTICE.

A mere clerical error, which is apparent and which can mislead no one, will not render a notice of an application invalid.

Draper v. Wells, 25 L. D. 550.

Gross v. Hughes, 29 L. D. 467, p. 470.

See *Opie v. Auburn Gold Min., etc., Co.*, 29 L. D. 230, p. 232.

The fact that a mistake is made in the description and location of a mining claim in the publication notice is not fatal where such claim is accurately described by legal subdivisions and otherwise sufficiently identified.

Adams v. Quijada, 25 L. D. 24, p. 28.

A technical error by a local officer in giving a public notice and for which a mineral claimant is not responsible should not prevent his application for entry where his good faith is apparent, nor should he be put to the expense and delay of a new publication and posting.

McCarthy, In re, 14 L. D. 105, p. 109.

Notices for mining claims follow the description of the premises as given in the field notes of survey thereof, and a mistake showing upon the plat merely will not prejudice the rights of an applicant.

Philadelphia Lode Claimants v. Pride of the West Claimants, 3 C. L. O. 82.

A failure to include in the posted and published notice of an application for patent for a mining claim the names of the nearest or adjoining claims in conformity with the mining regulations will not render a republication necessary where the notice substantially conforms with the practice in this respect theretofore existing.

Gowdy v. Kismet Gold Min. Co., 24 L. D. 191, pp. 193, 194.

Gowdy v. Connell, 28 L. D. 240, p. 241.

Gowdy v. Connell, 27 L. D. 56, p. 57.

An application for a patent on a defective notice in the absence of an adverse claim may be cured by submission to the board of equitable adjudication, but this can not be done where adverse claimants have not had legal notice of the application.

Nil Desperandum Placer, In re, 10 L. D. 198, p. 199.

See Mimbres Min. Co., In re, 8 L. D. 457.

9. FAILURE TO GIVE NOTICE—EFFECT.

If a mineral claimant fails to comply with the statute as to the posting or the publication of the application for patent and the plat showing the boundaries of the claim, or with any other requirement of the statute, then no presumption arises as to the absence of adverse claims, and anyone having a present or prospective interest in the claim may by protest allege such failure and show that he has an interest in the results of the suit.

Bright v. Elkhorn Min. Co., 8 L. D. 122, p. 124.

See Bright v. Elkhorn Min. Co., 9 L. D. 503 (on review).

The failure to comply with the provision as to making publication and the filing of the certificate of the surveyor general will prevent the allowance of an entry, and a cancellation of an entry made by oversight without the filing of such certificate will not be prevented by an offer to show that the statutory expenditure had been made and the proper certificate can be produced.

Little Pet Lode, In re, 4 L. D. 17, p. 19.

An applicant is not entitled to a patent for a mining claim where he fails to show that he posted a copy of the plat, together with a notice of his application, in a conspicuous place on the land embraced in the plat.

Pratt v. Avery, 7 L. D. 554.

10. PROOF OF PUBLICATION AND POSTING PLAT.

The statutory requirement that the fact of posting the notice shall be shown by an affidavit of at least two persons is mandatory and is one against which the Land Department is without authority to grant relief, and until such affidavit is filed a register is without authority to proceed upon the application.

Mojave Min., etc., Co. v. Karma Min. Co., 34 L. D. 583, p. 586.

El Paso Brick Co., In re, 37 L. D. 155, p. 157.

The requirement of this section as to posting specifically includes both plat and notices, and the affidavit required must show that such notice has been posted, and these words used in connection with the affidavit are evidently intended to embrace the official plat as a part of the notice, and the proof of the posting on the claim is intended to embrace all that is required to be posted.

Mojave Min., etc., Co. v. Karma Min. Co., 34 L. D. 583, p. 585.

The register is required to publish notice of the application for 60 days and to post such notice in his office, but the statute is silent as to how or by whom the proof of this publication and notice shall be made.

Oro Placer Claim, In re, 11 L. D. 457, p. 459.

The register is required by this section to publish the notice of application for patent for a period of 60 days, and proof of publication should show the date of the first and the last insertion, as well as its continuous publication.

Lewis, In re, 4 O. L. O. 114, p. 115.

A statute providing for the service of notice by publication must be strictly followed in order to give jurisdiction, and if thus followed an adverse claimant can not assert his claim after the expiration of the period of publication.

Condon v. Mammoth Min. Co., 14 L. D. 138, p. 139.

G. ADVERSE CLAIMS—PROCEEDINGS AND SUIT.

1. SCOPE OF SECTION.
2. PURPOSE OF SECTION—MANNER OF ASSERTING RIGHTS.
3. NATURE OF ADVERSE CLAIMS.
4. DUTY TO FILE AND ASSERT CLAIM.
5. PERSONS NOT REQUIRED TO ADVERSE.
6. SPECIAL NOTICE TO ADVERSE CLAIMANTS NOT REQUIRED.
7. FORM AND SUFFICIENCY OF ADVERSE CLAIMS.
8. TIME OF FILING.
9. EXCUSE FOR FAILURE TO FILE WITHIN STATUTORY PERIOD.
10. CLAIMS FILED AFTER EXPIRATION OF TIME—EFFECT.
11. IRREGULARITIES IN FILING—EFFECT.
12. PROOF TO SUSTAIN ADVERSE CLAIM.
13. STAY OF PROCEEDINGS.
14. FAILURE TO FILE ADVERSE CLAIM—EFFECT AND PRESUMPTIONS.
15. FAILURE OF COOWNER TO ADVERSE—EFFECT.
16. FAILURE TO ADVERSE—EFFECT OF AGREEMENT.
17. PRESUMPTION OF ABSENCE OF ADVERSE CLAIM MAY NOT PREVAIL.
18. COMMENCEMENT OF ADVERSE SUIT—PARTIES AND PRACTICE.
19. QUESTIONS DETERMINED BY ADVERSE SUIT—STATE COURTS.
20. FEDERAL JURISDICTION.

1. SCOPE OF SECTION.

The statute in terms provides for the settlement of disputes and conflicts when a locator makes application for a patent, and authorizes the institution of adverse proceedings.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 77.

This and the following section contemplate a controversy between an applicant for a patent and an adverse claim, and under this section the locator must make a personal application at the United States Land Office for a patent.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 575.

This and the following section contain the legislation in reference to adverse claims.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 115.

Poore v. Kaufman, 44 Mont. 248, p. 253.

The provisions of this and the following section relative to adverse claims contemplate proceedings to determine the right of possession between claimants of the same unpatented mineral lands.

Le Fevre v. Amonson, 11 Idaho 45, p. 47.

This and the next succeeding section afford all interested parties an opportunity to assert any adverse claim in the manner prescribed, and on failure to do so, a patent may be issued notwithstanding injunction proceedings in a local court.

Dells Min. Co., In re, 13 C. L. O. 159.

Prior to the adoption of this statute and the enactment of any provision for filing or contesting adverse claims, the courts adjudicated upon conflicting rights to the public mineral lands, and this was founded in the necessities of the case, and though the general government was the owner yet not asserting title, the theory was maintained that possession under the rules and customs established and in force gave as to mining property a right which, excepting as to the United States, would be upheld as though title actually vested in the possessor.

Lee Doon v. Tesh, 68 Cal. 43, p. 47.

When a mineral claimant begins proceedings for patent under this section, a plain speedy and adequate remedy is afforded by this and the following sections to quiet all adverse claims against his title, either by suit begun by an adverse claimant or by force of the bar of the statute.

Allen v. Myers, 1 Alaska 114, p. 118.

The provisions of this and the following sections contemplate proceedings to determine the right of possession as between claimants of the same unpatented mineral land and not to decide controversies respecting the character of public lands as to whether they are mineral or nonmineral.

Wright v. Town of Hartville, 13 Wyo. 497, p. 507.

See Ryan v. Granite Hill Min. Co., 29 L. D. 522.

Adverse claims must be presented in the manner prescribed by law and during the period of publication of notice of application for patent, with one exception, that where abandonment occurs subsequent to such publication and prior to entry and payment, the executive department is then compelled to take jurisdiction, as the law allows the abandoned ground to be again located by any qualified person in the same manner as if no location had ever been made.

Wheeler v. Sanger, Sickels' Min. L. & D. 275.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 49.

2. PURPOSE OF SECTION—MANNER OF ASSERTING RIGHTS.

The purpose of the provisions of this and the following section is to secure a settlement and adjustment of all controversies respecting the property in order that the patent may be issued to the rightful owner, and if no adverse claim is presented it is assumed that no such claim exists, and it is this that makes the patent conclusive on all questions affecting the title pending at the time it is issued.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222, p. 224.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Wolfley v. Lebanon Min. Co., 4 Colo. 112.

The purpose of an adverse suit is in aid of and for the information of the Land Department to determine as between litigants the right to the possession of a mining claim.

Mares v. Dillon, 30 Mont. 117, p. 136.

The adverse proceedings contemplated by the statute are for the purpose of determining the right of possession as between parties claiming conflicting mining claims, and do not comprehend a suit in the courts to settle the character of the land, as that question is exclusively within the jurisdiction of the Land Department, and any judgment of a court on that question would not be binding on the department.

Snyder v. Waller, 25 L. D. 7.

Alice Placer Mine, In re, 4 L. D. 314.

Powell v. Ferguson, 23 L. D. 173, p. 174.

Reins v. Raunheim, 28 L. D. 526, p. 528.

The manner of asserting and securing an adjudication of adverse claims to mineral lands included in an application for a patent is prescribed by this and the succeeding section, and while these sections originally applied only to lode claims, they now apply to placer claims, except as otherwise provided in section 2333 R. S.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, p. 677.

The purpose of a suit or an adverse claim is to determine for the information of the officers of the Land Department if either of the parties is entitled to be vested with the fee of the premises in dispute by purchase from the Government.

Rupp v. Healey, 38 L. D. 387, p. 389.

Healey v. Rupp, 28 Colo. 102,

Healey v. Rupp, 37 Colo. 25, p. 26.

This section is intended to determine, control, and protect the property rights of mineral claimants and also of adverse claimants, and permit the latter class the full statutory period of 60 days within which they may prefer their claims, and if by reason of removal or otherwise a local land office is closed for a brief time within such period of publication, then such time should not be computed as a part of the 60 days within which adverse claims must be filed.

Tilden v. Intervenor Min. Co., 1 L. D. 572.

Adverse proceedings are for the purpose of determining the right of possession and do not comprehend a suit in court to determine the character of the land, as that subject is exclusively within the jurisdiction of the Land Department.

Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 147.

Alice Placer Mine, In re, 4 L. D. 314.

Powell v. Ferguson, 23 L. D. 173.

Snyder v. Waller, 25 L. D. 7.

See *Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co.*, 196 U. S. 337, pp. 357, 359.

The methods prescribed by Congress for obtaining patent to mining claims are different from any other class of public lands and all adverse claimants are relegated to the local courts to settle all disputes as to possessory rights.

Wheeler v. Smith, 23 L. D. 395, p. 399.

3. NATURE OF ADVERSE CLAIMS.

This section requiring the filing of an adverse claim has reference to adverse claims arising from independent and conflicting locations of the same ground and not to controversies between coowners or persons claiming under the same location.

Stevens v. Grand Central Min. Co., 133 Fed. 28, p. 31.

Turner v. Sawyer, 150 U. S. 578, p. 587.

Hunt v. Patchin, 35 Fed. 816, p. 820.

Thomas v. Elling, 25 L. D. 495.

Thomas v. Elling, 26 L. D. 220.

Coleman v. Homestake Min. Co., 30 L. D. 364.

Doherty v. Morris, 11 Colo. 12.

Malaby v. Rice, 15 Colo. App. 364, p. 368.

Suessenbach v. Bank, 5 Dak. 477, p. 501.

Brundy v. Mayfield, 15 Mont. 201.

McCarthy v. Speed, 12 S. Dak. 7.

An adverse claim contemplated by this section must be hostile to the possession and the right of possession in each and all of the cotenants, but an adverse interest of one cotenant is not adverse to the interest of another cotenant in the same claim.

Ritter, In re, 37 L. D. 715, p. 717.

An adverse claim both in mineral and timber entries is one based upon an alleged prior possessory right, and if such a claim shows on its face that it was subsequent to that of the applicant, it can not delay the entry if the applicant furnishes the required proof.

Hughes v. Tipton, 2 L. D. 334, p. 335.

Habersham, In re, 4 L. D. 282, p. 283.

This section refers to a present tangible claim existing at some time during the 60-day period of publication.

Poore v. Kaufman, 44 Mont. 243, p. 254.

If a tunnel location conflicts with another mining location, it is an adverse claim within the meaning of this section.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 587.

Burton, In re, 29 L. D. 235, p. 236.

These two sections provide for a judicial determination of a controversy between contesting parties for the possession of a mining claim and the decision of the court thereon enables the Land Department to issue a patent, and such adverse proceedings are called for only when one mineral claimant contests the right of another mineral claimant.

Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 147.

See Richmond Min. Co. v. Rose, 114 U. S. 576.

Iron Silver Min. Co. v. Campbell, 185 U. S. 286.

Behrends v. Goldsteen, 1 Alaska 518, p. 520.

Wright v. Town of Hartville, 13 Wyo. 497, p. 506.

The adverse claim provisions of this and the following section apply only to conflicting mining claims covering the same mineral ground and not to conflicts arising between claims of different or other classes, and the courts have jurisdiction of adverse action thereunder only between contending mineral claimants.

Low v. Katalla Co., 40 L. D. 534, p. 538.

The adverse claim mentioned in this section and the following section means the land-office adverse claim and the term used in section 2332 R. S. has reference to the adverse claim required to be filed under these sections.

McCowan v. McClay, 16 Mont. 234, p. 240.

4. DUTY TO FILE AND ASSERT CLAIM.

A locator seeking a patent for a mining location and giving notice as prescribed calls upon any other claimant of an unpatented location objecting to the patent either upon account of extent or form or because of an asserted prior location to present his objections in the way of an adverse claim or he will be precluded from objecting to the issuance of the patent, and the silence of the first locator is a waiver of his priority.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Warren Mill Site v. Copper Prince, 1 L. D. 555, p. 556.

See Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 588.

Hagland, In re, 1 L. D. 591, p. 592.

Branagan v. Dulaney, 2 L. D. 744, p. 750.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 65.

An adverse claimant must respond to the process served upon him through the publication of notice of application for patent, and, failing to assert his adverse claim, he stands in default.

Ritter, In re, 37 L. D. 715, p. 716.

Any claimant of an unpatented mining location objecting to the issuing of a patent on any ground must come forward, on publication of notice by another, and present his objections or he will be precluded afterwards from asserting them.

Lavagnino v. Uhlig, 26 Utah 1, p. 19.

See Wight v. Dubois, 21 Fed. 693, p. 696.

Sears, In re, 8 C. L. O. 152, p. 153.

Adverse claimants are required to file their claims in order that their rights may be preserved.

People v. District Court, 19 Colo. 343, p. 347.

Adverse claimants must be reasonably diligent under the law in taking the necessary steps to protect their interests.

Wallace, In re, 1 L. D. 582.

The usual course of mineral adjudications will not be suspended or delayed in favor of a person who fails to file his adverse claim as required by the statute.

Santa Rita Mines, In re, 1 L. D. 579, p. 580.

An application for patent for mineral land covered by a town-site patent must be adverse by the town site or in its behalf, and in the absence of such adverse claim an action to set aside the mineral patent will not be advised.

Pike's Peak Lode, In re, 10 L. D. 200, p. 202.

See Smoke House Lode, In re, 4 L. D. 555.

Iron Silver Min. Co. v. Mike & Starr Min. Co., 6 L. D. 533.

A widow who is entitled to dower in a mining claim forfeits her right when a patent is issued, if she fails to adverse the application for the patent.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 554.

See Black v. Elkhorn Min. Co., 163 U. S. 445.

5. PERSONS NOT REQUIRED TO ADVERSE.

The mining laws do not authorize or provide for adverse proceeding against a mineral applicant by one claiming the land under laws providing for the disposal of nonmineral lands.

Ryan v. Granite Hill Min., etc., Co., 29 L. D. 522, p. 525.

This section contemplates adverse suits only as between rival mineral claimants to the land and does not contemplate a settlement of the character of the land as between agricultural and mineral claimants.

Powell v. Ferguson, 23 L. D. 173, p. 174.

A mineral applicant whose application for patent has been duly allowed, is not required to file an adverse against any subsequent application for patent for any part of the land so entered, and a failure to do so forfeits no rights.

Owers v. Killoran, 29 L. D. 160, p. 162.

See Iron Silver Min. Co. v. Campbell, 135 U. S. 286.

A town-site or other nonmineral patentee can not have the status of an adverse claimant against a mineral application.

Ryan v. Granite Hill Min., etc., Co., 29 L. D. 522, p. 524.

Low v. Katalla Co., 40 L. D. 534, p. 538.

See Wright v. Town of Hartville, 13 Wyo. 497.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286.

North Star Lode, In re, 28 L. D. 41.

This section together with section 2326 deals wholly with mineral lands, and a town lot occupier claiming no interest in the lands as mineral lands can not file an adverse claim under these sections.

Behrends v. Goldsteen, 1 Alaska 518, p. 520.

Neither this nor the following section requires adverse proceedings in court by a mill-site claimant in order to protect his rights as against an applicant to a patent for a mining claim; but by protest in the Land Department the mill-site claimant may litigate all material matters relating to the ownership and validity of the mill-site claim as against the mineral applicant.

Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 148.

Low v. Katalla Co., 40 L. D. 534, p. 539.

See *Snyder v. Waller*, 25 L. D. 7.

Where an agent, trustee, or other person holding a confidential relation with the locator or owner of a mining claim, attempts, in violation of such relation, to relocate and obtain patent for such claim, the original locator or owner is not required to adverse the proceedings, but may after patent issues assert his rights in a court of justice.

Turner v. Sawyer, 150 U. S. 578, p. 586.

Lockhart v. Johnson, 181 U. S. 518, p. 530.

See *Lockhart v. Leeds*, 195 U. S. 427, p. 433.

Thompson v. Burke, 2 Alaska 249, p. 253.

Lakin v. Sierra Buttes Gold Min. Co., 25 Fed. 337.

Fisher v. Seymour, 23 Colo. 542.

Van Wagenen v. Carpenter, 27 Colo. 444.

Largey v. Bartlett, 18 Mont. 265.

O'Neill v. Otero, 15 N. Mex. 707, p. 720.

Ballard v. Golob, 34 Colo. 417, p. 423.

Utah Min. Co. v. Dickert, 6 Utah 183.

Argentine Min. Co. v. Benedict, 18 Utah 183.

6. SPECIAL NOTICE TO ADVERSE CLAIMANTS NOT REQUIRED.

The publication required by this section in adverse proceedings is itself process and brings all adverse claimants into court though no supposed adversary is named in the notice, and on failure to assert their claims it is conclusively presumed that none exist, and that no third persons have any rights or equities in the land.

Wight v. Dubois, 21 Fed. 693, pp. 695, 696.

Gwillim v. Donnellan, 115 U. S. 45.

Deffebach v. Hawke, 115 U. S. 392, p. 405.

Hamilton v. Southern Nevada Gold, etc., Min. Co., 33 Fed. 562.

See *South End Min. Co. v. Tinney*, 22 Nev. 19, p. 57.

Neither this section nor any regulation of the Department requires that notice of an application for patent for a mining claim shall contain a citation to an adverse claimant or notice of the time within which adverse claims must be filed.

Davidson v. Eliza Gold Min. Co., 28 L. D. 550, p. 551.

After publication of notice in adverse proceedings the only right or privilege which any third person may assert is that of protest or objection filed with the Land Department.

Wight v. Dubois, 21 Fed. 693, p. 696.

Poore v. Kaufman, 44 Mont. 248, p. 255.

7. FORM AND SUFFICIENCY OF ADVERSE CLAIMS.

An adverse claim or protest is sufficient if it meets the requirements of the statute and clearly and definitely notifies a mineral applicant of the nature, boundaries, and extent of such adverse right, and departmental regulations can not impose additional requirements.

McFadden v. Mountain View Min., etc., Co., 27 L. D. 358, p. 360.

Vacating McFadden v. Mountain View Min., etc., Co., 26 L. D. 530.

See *Kinney v. Von Bokern*, 29 L. D. 460, p. 461.

An adverse claim which is not made out in the form prescribed by law and according to regulations of the Land Department can not be considered.

Beckner v. Coates, 3 C. L. O. 18.

The rights of an adverse claimant are limited to those existing at the time of the filing of his adverse claim, and he is not entitled to urge a subsequent discovery on his location for the purpose of supporting an affirmative judgment in his favor.

Rupp v. Healey, 38 L. D. 387, p. 390.

An adverse claimant must file a plat showing his entire claim, and its relative situation or position, which must be made from an actual survey by a deputy surveyor who certifies officially to its correctness, together with the sworn statement of such surveyor as to the approximate value of the labor performed or improvements made on the claim, and the plat must indicate the position of any shafts, tunnels, or other improvements, but the claim may be described according to legal subdivisions and without survey or plat.

McFadden v. Mountain View Min., etc., Co., 26 L. D. 530, p. 531.

A statement filed by a railroad company in patent proceedings for a mining claim stating that it owns and operates a railroad and occupies station ground not exceeding 20 acres in extent in the section in which the mining claims applied for are situated, and that such mining claims conflict in part with the station ground, and that the lands covered by the alleged mining claims contain no valuable deposits of rock in place or otherwise, and that such claims are not located upon mineral land, and that the applicant has not expended in labor and improvements the amount required by the statute, is not an adverse claim within the meaning of this section, but is only a protest and sufficient to raise the question of the character of the land and the expenditures made in improvements, and it has a right to be heard, as these questions are committed to the Land Department alone to determine.

Grand Canyon R. Co. v. Cameron, 35 L. D. 495, p. 496.

See *Low v. Katalla Co.*, 40 L. D. 534, p. 542.

Local officers are bound to respect and enforce the requirements in passing upon the sufficiency of an adverse claim, and such a claim will not be considered unless the claimant has complied substantially with all the requirements.

McFadden v. Mountain View Min., etc., Co., 26 L. D. 530, p. 532.

Where an adverse claim has been rejected by the department and the claim of the applicant recognized as valid except as to a single objection, matters which are not pertinent to the issue joined upon such objection can not afterwards be urged upon the attention of the department.

Nichols v. Becker, 11 L. D. 8, p. 12.

An adverse claim can not affect the area excluded by the notices.

Woods v. Holden, 26 L. D. 198, p. 202.

Burnside v. O'Connor, 30 L. D. 87, p. 69.

An adverse claim which is filed and prosecuted successfully against a mineral applicant has no effect whatsoever on the ground excluded from the application, nor does it confer any rights thereto on the adverse claimant.

Woods v. Holden, 26 L. D. 198, p. 202.

Burnside v. O'Connor, 30 L. D. 87, p. 69.

An adverse claim may be properly verified by an agent.

Williams, In re, 16 C. L. O. 110, p. 111.

8. TIME OF FILING.

Where due publication is made of an application for a patent for a mining claim, all adverse claimants must come in and assert their claim within the statutory period or any such rights or interests will be adjudicated in favor of the applicant.

Petit v. Buffalo Gold, etc., Min. Co., 9 L. D. 563, p. 565.

Great Western Lode Claim, In re, 5 L. D. 510.

Tiernan v. Salt Lake Min. Co., 1 C. L. O. 25.

Lewis, In re, 4 C. L. O. 114.

Hunt v. Eureka Gulch Min. Co., 14 Colo. 451, p. 452.

See Hagland, In re, 1 L. D. 591.

Snowflake Lode, In re, 4 L. D. 30.

Independence Lode, In re, 9 L. D. 571.

Bradstreet v. Rehm, 21 L. D. 30, p. 33.

Ledger Lode, In re, 16 L. D. 101, overruling Miner v. Mariott, 2 L. D. 709.

All adverse claims must be presented in the manner prescribed by law and during the period of publication of notice of application for patent.

Wheeler, In re, 7 C. L. O. 130, p. 132.

An adverse claimant must file his claim during the period of publication and commence his suit in the proper court within 30 days.

Weinstein v. Granite Mt. Min. Co., 14 L. D. 68, p. 70.

The provisions of this and the following section, limiting the time within which an adverse claim may be filed, are mandatory and direct that in the absence of such filing it shall be assumed that no adverse claim exists, and the Land Department is without authority to extend the period of publication to include a single additional day, and a telegram to a register that papers had been mailed is in no sense an adverse claim under the statute and will not excuse a delay to file within the time limited by law.

Gross v. Hughes, 29 L. D. 467, p. 469.

Morrison v. Lincoln Min. Co., 6 C. L. O. 105.

The law points out the time within which an adverse claim must be filed and the time within which suit must be commenced, and the Land Department has no power to disregard these requirements.

Seymour v. Wood, 4 C. L. O. 2.

See Seymour v. Woods, 4 C. L. O. 82.

Where notice is posted in the local office the first day of publication, the adverse claim should be filed within 60 days from that date, but if the notice is not posted in the office until three days thereafter then an adverse claim may be filed on the last day of publication.

Great Western Lode Claim, 5 L. D. 510, p. 511.

See Miner v. Mariott, 2 L. D. 709.

Where the last day of publication falls on Sunday an adverse claim filed on the succeeding Monday is within time and may properly be considered.

Ground Hog Lode v. Parole & Morning Star, 8 L. D. 430, p. 431.

See Miner v. Mariott, 2 L. D. 709.

Great Western Lode Claim, In re, 5 L. D. 510.

While the registrar may refuse to accept and file an adverse claim after office hours on the last day in which it can be filed, yet if he accepts and files an adverse claim on that day and after office hours, it must be treated as having been filed in time.

Giroux v. Scheurman, 23 L. D. 546.

See Sears v. Almy, 6 L. D. 1.

Nicholson, In re, 9 L. D. 54.

McDonald v. Hartman, 19 L. D. 547.

Kelso v. Janeway, 22 L. D. 242.

Sayer v. Hoosac Consol. Gold, etc., Min. Co., 6 C. L. O. 73.

An adverse claim filed on the sixty-third day of the period of publication of an application for patent is filed in time, where that has been the practice.

Jamie Lee Lode v. Little Forepaugh Lode, 11 L. D. 391, p. 392.

See Ledger Lode, In re, 16 L. D. 101, overruling Miner v. Mariott, 2 L. D. 709.

9. EXCUSE FOR FAILURE TO FILE WITHIN STATUTORY PERIOD.

If an adverse claim is required to be presented at a time when from climatic or other conditions a survey can not be had, the claimant should show this fact, and give the best possible description of his claim.

Wallace, In re, 1 L. D. 582.

This section operates as a statute of limitations against the filing of adverse mineral claims and is intended to determine, control, and protect the property rights of the mineral claimants and of adverse claimants as well, and where during the period of publication, a land office necessarily closed for a part of such period, such time should be excluded in the computation of the 60 days.

Tilden v. Intervenor Min. Co., 1 L. D. 572, p. 574.

10. CLAIMS FILED AFTER EXPIRATION OF TIME—EFFECT.

This section, after limiting the time within which an adverse claim may be filed, provides that no objection can be made thereafter by third parties to the issuance of a patent, unless it be shown that the applicant has failed to comply with the provisions of the mining laws.

Chavanne, In re, 7 C. L. O. 116, p. 117.

If an adverse claim is not filed within the period of publication then no objection from third parties shall be heard, unless it be shown that the applicant has failed to comply with the mining laws.

Chavanne, In re, Copp's Min. Lands 283, p. 287.

The fact that the 60 days prescribed for publication of notice expired before the filing of an adverse claim has no application to a case where the adverse claim did not arise until after the expiration of the 60-day limit and where the application had lain dormant for a number of years and the applicant had neither paid the purchase money nor done the required work each year pending the application.

Gillis v. Downey, 85 Fed. 483, p. 489.

See Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200.

The assumption that no adverse claim exists where none is filed during the period of publication relates to the time of the expiration of the period of publication and has nothing to do with adverse claims initiated subsequent to that time and which could not have been made known at the local office during the period of publication.

Poore v. Kaufman, 44 Mont. 248, p. 254.

Wolensberg, In re, 29 L. D. 302.

See Hamilton v. Southern Nevada Nine Min. Co., 33 Fed. 562.

Lily Min. Co. v. Kellogg, 27 Utah 111.

If an adverse claim is not filed as required by the statute it is not filed at all in legal contemplation, and the wrongful action of local officers in receiving a claim after the expiration of the period of publication can not make the filing legal nor defeat the operation of the statute, nor does it prevent the department from questioning the jurisdiction of the court in which the suit is commenced.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 184.

An adverse claimant who has had no opportunity to present his adverse claim and commence suit thereon because the applicant's mining location was not perfected

by discovery until after the expiration of the period of publication of notice of his application for patent, may be heard as a protestant on his allegation that there was in fact no discovery prior to the expiration of such period of publication, and the application should be dismissed and the patent proceedings begun anew in order that opportunity be given to raise and try the controverted question in the proper tribunal.

Rupp v. Healey, 38 L. D. 387, p. 392.

11. IRREGULARITIES IN FILING—EFFECT.

A mere irregularity in the filing of an adverse claim should not defeat the right of the claimant to have the controversy settled by the appropriate tribunal if he has complied with the statute, but the rule does not apply if the adverse claimant has not otherwise complied with the statute.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 183.

See Reed v. Hoyt, 1 L. D. 603.

Ovens v. Stephens, 2 L. D. 699.

Meyer v. Hyman, 7 L. D. 83.

Brown v. Bond, 11 L. D. 150.

An applicant for a mineral patent can not take advantage of his own mistake to deprive an adverse claimant of a legal right.

Wright v. Sioux Consol. Min. Co. (on review), 29 L. D. 289, p. 291.

See Metcalf v. Prescott, 10 Mont. 283.

12. PROOF TO SUSTAIN ADVERSE CLAIM.

An adverse claimant must show, in order to establish a valid mining claim, compliance with local customs, rules, and regulations of miners as well as with governing statutes.

Becker v. Pugh, 9 Colo. 589, p. 590.

See Sullivan v. Hense, 2 Colo. 424.

Consolidated Republican Mountain Min. Co. v. Lebanon Min. Co., 9 Colo. 343.

Bryan v. McCaig, 10 Colo. 309.

13. STAY OF PROCEEDINGS.

This section authorizes the commencement of an action by the adverse claimant and a stay of proceedings in the Land Department pending such action.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 357.

The filing of an adverse claim in the local office and the commencement of a suit thereon in the proper court operates as a stay of all proceedings upon an application for a patent based upon a tunnel location.

Burton, In re, 29 L. D. 235, p. 236.

Gunnison Crystal Min. Co., In re, 2 L. D. 722, p. 723.

Moffat v. Compromise Lode Claimants, 8 C. L. O. 54.

Pending the proceedings begun by an adverse claimant in a court of competent jurisdiction, the Land Department should take no action on the pending application.

McMasters, In re, 2 L. D. 706, p. 707.

Where proceedings on an adverse claim are pending, no action will be taken on an application for the reinstatement of a canceled mineral entry.

Juanita Lode, In re, 26 L. D. 608, p. 609.

When an adverse claim is filed under this section and a suit is brought thereon under section 2326 R. S., the Land Department should not issue a patent to the mineral applicant before the determination of the suit.

Fox v. Mackay, 1 Alaska 329, p. 333.

Where an application for patent for a mining claim has been received, an adverse claim filed, and suit brought in the proper court, the application will not be rejected if it includes ground already embraced in a pending application, but the proceedings in the department will be stayed until the determination of the suit.

Wanda Gold Min. Co. v. E. F. C. Min., etc., Co., 31 L. D. 140, p. 142.

Proceedings instituted in the proper court by an adverse claimant to settle a controversy as to a part of a mining claim will not affect or delay an application for patent as to any other part of such claim entirely separate and distinct from the part involved in such court proceedings.

Little Annie No. Five Lode Min. Claim, In re, 30 L. D. 488, p. 489.

See Gilson Asphaltum Co., In re, 33 L. D. 612, p. 615.

A motion to dismiss an application for a patent for a mining claim will not be entertained while a suit instituted by the adverse claimant is still pending.

Solitaire Min., etc., Co. v. Sigafus, 10 L. D. 270.

Iron Silver Min. Co. v. Mike & Starr Gold, etc., Min. Co., 6 L. D. 533.

A person who has filed an adverse claim against an application for a patent for a mining location can not himself file an application for any part of the same ground while the controversy is pending.

Great Eastern Min. Co. v. Esmeralda Min. Co., 2 L. D. 704.

The Land Department has a right to issue a patent after proceedings have been commenced by an adverse claimant upon the filing of a waiver of the adverse claim in the office of the register, without further ascertaining that the judicial proceedings have been abandoned and the suit dismissed by the court.

St. Lawrence Min. Co. v. Albion Consol. Min. Co., 4 L. D. 117, p. 119.

See Richmond Min. Co. v. Rose, 114 U. S. 576.

14. FAILURE TO FILE ADVERSE CLAIM—EFFECT AND PRESUMPTIONS.

This section, among other things, provides that if no adverse claim has been filed at the expiration of the period of publication it shall be assumed that the applicant is entitled to a patent and that all matters which might have been tried under adverse proceedings are treated as adjudicated in favor of the applicant upon payment of the purchase price, and this provision is mandatory and the right to a patent immediately arises, and any delay in issuing the patent does not diminish the rights flowing from the purchase or cast any additional burdens on the purchaser or expose him to the assaults of third parties, and a protestant can only show that the applicant has not complied with the law, as the proceedings are absolutely conclusive against all adverse claimants, and their failure to adverse is a waiver of all rights.

Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 423.

Turner v. Sawyer, 150 U. S. 578, p. 586.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 115.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 357.

Wight v. Dubois, 21 Fed. 693.

Hamilton v. Southern Nevada, etc., Min. Co., 33 Fed. 562, p. 566.

Grampian Lode, In re, 1 L. D. 544.

Hagland, In re, 1 L. D. 591, p. 592.

Harrison, In re, 2 L. D. 767, p. 771.

Southwestern Min. Co. v. Gettysburg Lode Claim, 4 L. D. 120.

Southwestern Min. Co. v. Gettysburg Lode Claim, 4 L. D. 271, p. 273

Bright v. Elkhorn Min. Co., 8 L. D. 122, p. 124.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 183.

Waterloo Min. Co. v. Doe, 17 L. D. 111, p. 112.

Whitman v. Haltenhoff, 19 L. D. 245, p. 247.

Bradstreet v. Rehm, 21 L. D. 30.

Apple Blossom Placer v. Cora Lee Lode, 21 L. D. 438.

De Garcia v. Eaton, 22 L. D. 16, p. 17.

Mutual Min., etc., Co. v. Currency Co., 27 L. D. 191, p. 193.

- Owers v. Killoran, 29 L. D. 160, p. 162.
 Albemarle and Other Lode Min. Claims, In re, 30 L. D. 74, p. 77.
 Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 204.
 Selma Oil Claim, In re, 33 L. D. 187, p. 189.
 Holman v. Central Montana Mines Co., 34 L. D. 568, p. 570.
 Helena, etc., Smelting, etc., Co. v. Dailey, 36 L. D. 144, p. 146.
 Seymour v. Wood, 4 C. L. O. 2.
 Lewis, In re, 4 C. L. O. 114 (A).
 Lewis, In re, 4 C. L. O. 114, p. 115 (B).
 Lowe, In re, 9 C. L. O. 192.
 Peck, In re, 10 C. L. O. 119.
 Branagan v. Dulaney, 2 L. D. 744.
 Old American Lode v. Stevens, 12 C. L. O. 143.
 Late Acquisition Consol. Min. Co., In re, 18 C. L. O. 208.
 Hunt v. Eureka Gulch Min. Co., 14 Colo. 451, p. 455.
 Lightner Min. Co. v. Superior Court, etc., 14 Cal. App. 642, p. 647.
 Healy v. Rupp, 37 Colo. 25, p. 28.
 Suesenbach v. First National Bank, 5 Dak. 477, p. 500.
 Brundy v. Mayfield, 15 Mont. 201, p. 209.
 South End Min. Co. v. Tinney, 22 Nev. 19, p. 47 (dissenting opinion).
 Mars v. Oro Fino Min. Co., 7 S. Dak. 606, p. 615.
 See Nichols v. Becker, 11 L. D. 8.
 Lily Min. Co. v. Kellogg, 27 Utah 111.

When publication and posting have been made the department must assume in the absence of any showing to the contrary that all adverse claimants have notice thereof, and if they fail to protect their interests the department can give them no relief.

- Gowdy v. Kismet Gold Min. Co., 22 L. D. 624, p. 625.
 See Gowdy v. Kismet Gold Min. Co., 25 L. D. 216.
 Gowdy v. Kismet Gold Min. Co., 24 L. D. 191.

A locator seeking a patent for a mining location and giving notice, as prescribed, calls upon any other claimant of an unpatented location, objecting to the patent, either upon account of extent or form or because of an asserted prior location, to present his objections in the way of an adverse claim or he will be precluded from objecting to the issuance of the patent, and the silence of the first locator is a waiver of his priority.

- Eureka Consol. Min. Co. v. Richmond Min. Co. 8 Fed. Cas. 819.
 Warren Mill Site v. Copper Prince, 1 L. D. 555, p. 556.
 Marshall Silver Min. Co. v. Kirtley, 12 Colo. 410, p. 416.
 See Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 588.

If an original or prior locator neglects to adverse the application for a patent to a junior location the Land Department will assume that such junior location is entitled to a patent as against any claims of the prior locator.

- Branagan v. Dulaney, 2 L. D. 744, p. 749.
 Lilly Min. Co. v. Kellogg, 27 Utah 111, p. 115.

The words "it shall be assumed" as used in this section are construed to mean conclusively presumed, and a failure to adverse as provided deprives the adverse claimant of all remedies except those which a court of equity might allow to be urged against a judgment at law.

- Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 874.
 Branagan v. Dulaney, 2 L. D. 744.
 Burnside v. O'Connor, 30 L. D. 67, p. 70.
 Lilly v. Kellogg, 27 Utah 111, p. 116.
 Lavagnino v. Uhlig, 26 Utah 1, p. 20.
 See Dahl v. Raunheim, 132 U. S. 260.
 Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Fed. Cas. 592.
 Hamilton v. Southern Nevada, etc., Min. Co., 33 Fed. 562.
 Gowdy v. Kismet Gold Min. Co., 22 L. D. 624.
 American Consol. Min. Co. v. De Witt, 26 L. D. 580.
 Mutual Min., etc., Co. v. Currency Co., 27 L. D. 191, p. 193.
 Kannaugh v. Quartette Min. Co., 16 Colo. 341.

The failure to adverse an application for a lode patent is a forfeiture of any right to be subsequently heard on the ground that the discovery of the lode applicant is in fact on land claimed by the protestant on the ground of a prior location and is a waiver of the right to claim that the labor and improvements shown by such applicant shall be credited to the protestant.

American Consol. Min., etc., Co. v. De Witt, 26 L. D. 580, p. 581.

An applicant for a patent for a mining claim based upon a relocation of an alleged abandoned mineral claim is not required to prove such abandonment, but the original locator of claimant has full opportunity to test the fact of abandonment, if he so desires, by filing an adverse claim, and failing to do this the Land Office can not require an applicant for a patent to prove an abandonment which he alleged in his notice of location as such abandonment is admitted by failure to file an adverse claim.

Manhattan & San Juan Silver Min. Co., In re, 2 L. D. 698, p. 699.

If no adverse claim has been filed as required by this section, a suit can not be initiated under the provisions of this or the succeeding section.

Allen v. Myers, 1 Alaska 114, p. 117.

Where no adverse claim is asserted it must be assumed that a placer applicant is entitled to patent upon payment for the land and third parties can not object to the issuance of the patent, unless it is shown that the applicant has failed to comply with the statute regulating the location and patenting of mining claims.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, p. 678.

15. FAILURE OF COOWNER TO ADVERSE—EFFECT.

On failure of a coowner to file an adverse claim as required, the department may assume that he has been served with proper notice and that he has failed to contribute his part of the assessment work.

Grampian Silver Min. Co., In re, 9 C. L. O. 113, p. 114, 1 L. D. 544.

After proceedings under this section, the general requirements of section 2324 R. S. become immaterial, and if parties have not been properly notified, or have paid their share of the assessment work, they must still file their adverse claim, as required by this section, and failure to do so is a waiver of any rights claimed, and upon such failure the law assumes that no such claim exists, and if the antecedent proceedings have been regular, that all matters that might be set up by suit in court have been adjudicated in favor of the applicant.

Harrison, In re, 2 L. D. 767.

See *Copper Prince Mine*, In re, 1 Reporter 118.

16. FAILURE TO ADVERSE—EFFECT OF AGREEMENT.

The statutory provision to the effect that the department may assume that no adverse claim exists where none is filed can not be controlled by agreement.

Hagland, In re, 1 L. D. 591.

If an agreement as to the filing of an adverse claim is violated the remedy must be sought in the courts, and the failure to file it as required by law is a waiver.

Hagland, In re, 1 L. D. 591.

17. PRESUMPTION OF ABSENCE OF ADVERSE CLAIM MAY NOT PREVAIL.

The assumption that no adverse claims exist where none is filed during the period of publication relates to the time of the expiration of the period of publication and to adverse claims which might have been made known in the local office before such time, but it has nothing to do with adverse claims initiated subsequently to such

time and which could not therefore have been presented to the local office during the period of publication.

Wolensberg, In re, 29 L. D. 302, p. 305.
 Cain v. Addenda Min. Co., 29 L. D. 62.
 Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 206.
 Cleveland v. Eureka Gold Min., etc., Co., 31 L. D. 69, p. 71.
 See Scotia Min. Co., In re, 29 L. D. 308.
 Barklage v. Russell, 29 L. D. 401, p. 402.
 Wolensberg, In re, 29 L. D. 488, p. 489.

The presumption that no adverse claim exists where none are filed does not prevail where the mineral claimant fails to comply with the terms of the statute as to posting notice of publication of the application for patent and plat showing the boundaries of the claim.

Bright v. Elkhorn Min. Co., 8 L. D. 122.
 See Bright v. Elkhorn Min. Co., 9 L. D. 503.

18. COMMENCEMENT OF ADVERSE SUIT—PARTIES AND PRACTICE.

An adverse claimant must begin proceedings in a court of competent jurisdiction within the statutory period or he waives all rights, and the applicant will thereupon be entitled to a patent.

Bright v. Elkhorn Min. Co., In re, 8 L. D. 122.
 Hopely v. McNeil, 20 L. D. 87.
 Gowdy v. Kismet Gold Min. Co., 22 L. D. 624.
 Parsons v. Ellis, 23 L. D. 69, p. 70.
 Madison Placer Claim, In re, 35 L. D. 551.
 Gypsum Placer Claims, In re, 37 L. D. 484, p. 487.
 Moffat v. Compromise Lode Claimants, 8 C. L. O. 54.

Where an adverse claimant fails to commence an action within the specified time, the statute affords no relief and it must be held under this section that no adverse claim exists.

Downey v. Rogers, 2 L. D. 707.

The obligation of an adverse claimant to begin judicial proceedings within the statutory period is not suspended on a favorable action taken to dismiss the adverse claim, and appeal therefrom, and this does not excuse the adverse claimant from commencing his proceedings within the statutory period.

Deniss v. Sinnott, 35 L. D. 304, p. 305.
 See Scott v. Maloney, 22 L. D. 274.

An adverse claimant in his suit founded on his adverse claim should make all co-tenants parties defendant to his suit where their interests are disclosed by the record, and if not so disclosed it will devolve upon the defendant to raise the question by plea in abatement or by other appropriate procedure, but if the adverse claimant elects to protest only before the Land Department and merely calls attention to the defective title of the application the case stands in an ex parte character and is subject to disposition as such.

Ritter, In re, 37 L. D. 715, p. 717.

The fact that a register of a local office improperly gave a mineral applicant the status of an adverse claimant and required him to bring suit as such can not be construed as a waiver of any rights of such claimants.

De Long v. Hine, 9 C. L. O. 114.

In an action by an adverse claimant based on his adverse claim the complaint must aver or otherwise show that the adverse claim was filed within the period prescribed by this section.

Cronin v. Bear Creek Gold Min. Co., 3 Idaho 614, p. 617.

Proceedings in a court brought by an adverse claimant to settle the matter of conflicting mineral claims is a concession of the mineral character of the land and is an adverse proceeding under this section.

Reins v. Raunheim, 28 L. D. 526, p. 529.
See Raunheim v. Dahl, 6 Mont. 167.

An applicant for a patent to a lode claim may, if met with an adverse claim, avoid a legal conflict by dismissing his application for a patent and rely on his title by possession, and if the adverse is for a portion only of the claim he may elect to take patent for that part of the claim not in controversy, and may withdraw from his application so much of his respective claim as is in controversy, and by such withdrawal he leaves the part in controversy in the condition it was before his application.

Branagan v. Dulaney, 2 L. D. 744, p. 751.
Black Queen Lode v. Excelsior No. 1 Lode, 22 L. D. 343, p. 344.
Burton, In re, 29 L. D. 235, p. 236.

19. QUESTIONS DETERMINED BY ADVERSE SUIT—STATE COURTS.

The determination of the question of a right to a patent following the filing of an adverse claim to an application for a mining location determines the right of possession to the area in controversy, and the determination of a court is an adjudication in favor of the priority of location and operates as an estoppel upon the single fact of such priority of location unless other questions are presented by appropriate pleadings and determined by the court, but in the absence from the record of an adverse suit the court will not presume that anything was considered or determined except the question of the right to the surface.

United States Min. Co. v. Lawson, 134 Fed. 769, p. 777.
Affirmed: Lawson v. United States Min. Co., 207 U. S. 1, pp. 15, 19.
See Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 687.
Creede & Cripple Creek, etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337.

The question whether there had been a due discovery of mineral upon a mining claim is necessarily in issue in adverse proceedings brought to determine the right of possession, and an affirmative finding thereon is essential to a judgment rendered in favor of the party whose claim is adversely, and such judgment will be accepted by the Land Department as being sufficient to disprove a subsequent allegation of the non-discovery of mineral.

Hallett & Hamburg Lodes, In re, 27 L. D. 104, pp. 112, 113.
Reins v. Raunheim, 28 L. D. 526, p. 529.

Discovery is generally an issue to be tried out in an adverse suit before a local court of competent jurisdiction, and a mere protest can not be made a means of preserving a surface conflict by failure to adverse, or by a judgment in an adverse suit, and a protest will not lie where the defect is properly the subject of an adverse claim.

Rupp v. Healey, 38 L. D. 387, p. 391.
See Mutual Min., etc., Co. v. Currency Co., 27 L. D. 191.
American Consol. Min., etc., Co. v. De Witt, 26 L. D. 580.
Gowdy v. Kismet Gold Min. Co., 22 L. D. 624.
Hallett & Hamburg Lodes, In re, 27 L. D. 104.

The possessory right of a mining claim as between an applicant for a patent and an adverse claimant, must be determined by a court of competent jurisdiction in which proceedings must be begun by the adverse claimant.

Parsons v. Ellis, 23 L. D. 69, p. 70.
Approved: Parsons v. Ellis, 23 L. D. 504 (on review):

The purpose of an action brought on an adverse claim pursuant to this and the succeeding section is to determine the right of possession to a mining claim.

Cleary v. Skiffich, 28 Colo. 362, p. 369.
See Iron Silver Min. Co. v. Mike & Star, etc., Min. Co., 143 U. S. 394.

A patent for a mining claim is conclusive of all the facts necessary to establish the validity thereof as against a party claiming adverse rights.

Sharkey v. Candiani, 48 Oreg. 112, p. 119.

See Anderson v. Bartels, 7 Colo. 256.

Iron Silver Min. Co. v. Campbell, 17 Colo. 267.

Congress has not attempted to regulate the practice in the State courts on adverse claims, but has merely relegated the litigation to the courts instead of litigating the questions before the department.

Giberson v. Wilson, 79 Ark. 581, p. 583.

20. FEDERAL JURISDICTION.

Sections 2325 and 2326 do not necessarily confer jurisdiction on a Federal court of a suit brought in support of a protest and adverse claim.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 576.

De Lamar's Nevada, etc., Min. Co. v. Nesbitt, 177 U. S. 523, p. 527.

See Shoshone Min. Co. v. Rutter, 177 U. S. 505.

Burke v. Bunker Hill Min. Co., 46 Fed. 644.

Rutter v. Shoshone Min. Co., 75 Fed. 37.

Shoshone Min. Co. v. Rutter, 87 Fed. 801.

Trafton v. Nougues, 24 Fed. Cas. 123.

When the United States has parted with its title to a mining claim, any subsequent dispute concerning such claim which does not draw in question the validity of the patent or grant does not present a federal question.

Blue Bird Min. Co. v. Largey, 49 Fed. 289, p. 291.

See Trafton v. Nougues, 24 Fed. Cas. 123.

H. PROTEST AND PROTESTANT.

1. RIGHT TO PROTEST OR INTERVENE.
2. FORM AND SUFFICIENCY OF PROTEST.
3. PROTESTANT WITHOUT INTEREST—EFFECT AND RIGHTS.
4. PROTESTANT WITH INTEREST—EFFECT AND RIGHTS.
5. LIMITATION ON PROTESTANT'S RIGHTS.
6. BURDEN ON PROTESTANT.
7. APPEAL.
 - a. PRACTICE.
 - b. RIGHT TO APPEAL.
 - c. NO RIGHT TO APPEAL.

1. RIGHT TO PROTEST OR INTERVENE.

While controversies between adverse mineral claimants can not be heard and determined before the department, yet under the last clause of this section where affidavits are presented by third parties showing that an applicant has failed to comply with the mining statutes a patent ought not to be issued by the Land Department.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 590.

This section affords an opportunity to persons in the neighborhood of a mining claim to come forward and present any objections they may have to the granting of a patent.

Tilden v. Intervenor Min. Co., 1 L. D. 572.

While controversies between adverse claimants can not be heard and determined before the Land Department yet third persons may under the last clause of this section

present evidence to show that the applicant has failed to comply with the mining statutes.

Bright v. Elkhorn Min. Co., 8 L. D. 122, p. 125.

Sweeney v. Wilson, 10 L. D. 157, p. 159.

See Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584.

The failure of an interested party to object to an application to a patent within the time fixed by statute either in the Land Office or in the courts concludes him as to the title.

Wight v. Tabor, 2 L. D. 738, p. 742.

Matters presented by protest are not primarily for judicial investigation and can not be made the subject of adverse proceedings under this or the following section.

Harkrader v. Goldstein, 31 L. D. 87, p. 89.

Where no adverse claim is filed during the period of publication and the application proceedings are regular, a protest should be dismissed.

McNeill (John) In re, 17 C. L. O. 41.

A municipal corporation without filing an adverse claim may intervene in a suit between a mineral applicant and an adverse claimant, in order to protect the public property within the limits of the mining location in controversy, though it filed no adverse claim.

Nome-Sinook Co. v. Simpson, 1 Alaska 578, p. 580.

See Gavigan v. Crary, 2 Alaska 370, p. 378.

Bechtol v. Bechtol, 2 Alaska 397.

Quigley v. Gillett, 101 Cal. 462.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100.

2. FORM AND SUFFICIENCY OF PROTEST.

After the expiration of the date of publication no objection from third parties to the issuance of a patent shall be had except it be shown that the applicant has failed to comply with the law, and a protest filed after the expiration of the published notice must allege that the applicant has not complied with the law in order to bring him self within the provision.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 181.

See Bright v. Elkhorn Min. Co., 8 L. D. 122.

A protest filed as the basis of adverse proceedings is sufficient if it clearly and definitely notifies the mineral applicant of the nature, boundaries, and extent of the alleged adverse right.

Kinney v. Von Bokern, 29 L. D. 460.

See Gypsum Placer Claims, In re, 37 L. D. 484, p. 489.

McFadden v. Mountain View Min., etc., Co., 27 L. D. 358.

A protest against an application for patent for a mining claim should allege the kind and character of the mineral and the general situation of the formation and all material and issuable facts should be alleged with sufficient particularity to apprise the challenged party of the definite nature of the case.

Yard v. Cook, 37 L. D. 401, p. 403.

The allegations of a protestant as to the nondiscovery of mineral and as to the labor and improvements put upon the claim are insufficient where they are made upon information and belief, and the affidavits corroborating the same are likewise made on information and belief.

Mitchell v. Brovo, 27 L. D. 40, p. 41.

Hallett & Hamburg Lodes, In re, 27 L. D. 104.

Stranger Lode, In re, 28 L. D. 321, p. 324.

See Gillis v. Downey, 29 L. D. 83, p. 84.

Protestants who allege that notice of the application for patent and the official plat of the claim were not posted upon the premises during the period of publication, and that they had no notice of such application sufficiently show that they had no opportunity to file an adverse claim within the statutory period and that they are not barred from objecting to the issuance of a patent and to assert their rights as adverse claimants.

Bright v. Elkhorn Min. Co., 8 L. D. 122, p. 123.

Mere matters of evidence or probative facts need not be alleged by a protestant in his protest against the issuance of a patent, and therefore the results of sampling or assaying, or the possibility of securing a sufficient water supply to work the ground, need not be included therein.

Yard v. Cook, 37 L. D. 401, pp. 402-404.

A protest or an objection to the issuance of a patent by a coowner is not an adverse claim within the meaning of the statute and this necessitates the institution of proceedings in a court of competent jurisdiction to determine the relative rights of the coowner.

Coleman v. Homestake Min. Co., 30 L. D. 364, p. 366.

See Turner v. Sawyer, 150 U. S. 578.

Thomas v. Elling, 25 L. D. 495.

A protest is sufficient to authorize a hearing even while suit is pending on an adverse claim where the subject matter of the protest is not involved in the suit but relates solely to the applicant's noncompliance with the mining law.

St. Lawrence Min. Co. v. Albion Min. Co., 10 C. L. O. 51, p. 52.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 50.

3. PROTESTANT WITHOUT INTEREST—EFFECT AND RIGHTS.

A protestant has no standing before the department as a litigant unless he has an interest in the subject matter of the controversy.

Monitor Lode In re, 18 L. D. 358.

Hussey Lode, In re, 5 L. D. 93.

Bright v. Elkhorn Min. Co., 8 L. D. 122.

A protestant who seeks to prevent the granting of a patent for a mining claim can not set up the rights of third persons for his own benefit.

Bradstreet v. Rehm, 21 L. D. 30, p. 32.

A person who has filed no adverse claim during the period of publication must be regarded as a protestant only.

Smuggler Min. Co. v. Trueworthy Lode Claim, 19 L. D. 356, p. 358.

McGarrahan v. New Idria Min. Co., 3 L. D. 422.

Boston Quicksilver Mine, In re, 4 C. L. O. 34.

Boston Hydraulic Gold Min. Co. v. Eagle Copper & Silver Min. Co., Sickels' Min. L. & D. 320.

On performance of the requirements by the applicant no objection from third parties to the issuance of a patent shall be had except it be shown that the applicant has failed to comply with the statute.

Houghton v. McDermott, 15 L. D. 509, p. 510.

4. PROTESTANT WITH INTEREST—EFFECT AND RIGHTS.

A protestant who alleges an interest adverse to a mineral claimant and also alleges a failure on the part of the claimant to comply with the mining laws is not a mere friend of the court but a protestant, acting in his own interest, and asking the judgment of the department upon the question raised by his protest, that the mineral claimant may be required to comply with the law so the protestant can assert his

claim in the proper tribunal, and a protestant of this character is entitled to the right of appeal.

Bright v. Elkhorn Min. Co., 8 L. D. 122, p. 126.
See Dotson v. Arnold, 8 L. D. 439.

The department will consider a protest against a mineral entry after the expiration of the period of publication where it appears that the protestant has an interest in the claim and the applicant has not complied with the law.

Parsons v. Ellis, 23 L. D. 69, p. 70.
Approved: Parsons v. Ellis, 23 L. D. 504, (on review).

While the charge of noncompliance with the law against a mineral locator may form the basis of a hearing, yet the protestant in such a case is not entitled to set up his own claim to the land in the absence of an adverse claim.

Lavignino v. Uhlig, 26 Utah 1, p. 21.
See Wight v. Dubois, 21 Fed. 693.
Nevada Lode, In re, 16 L. D. 532.
Cain v. Addenda Min. Co., 24 L. D. 18, p. 20.
American Consol. Min., etc., Co. v. De Witt, 26 L. D. 580.

An allegation of ownership of conflicting locations is sufficient to award the protestant the status of a party in interest.

Rupp v. Healey, 38 L. D. 387, p. 391.
See Opie v. Auburn Min., etc., Co., 29 L. D. 230.

5. LIMITATIONS ON PROTESTANT'S RIGHTS.

A protestant is not entitled to equitable consideration and can not call in question the character of the land or the entryman's compliance with the mining laws.

Reins v. Raunheim, 28 L. D. 526.
Meaderville Min., etc., Co. v. Raunheim, 29 L. D. 465, p. 467.

A protestant has no such standing in an application for a patent for a mining claim as will entitle him to claim anything in the case, neither can he rely upon mere technicalities, nor insist upon the enforcement of a relinquishment offered upon certain conditions.

Becker v. Sears, 1 L. D. 575.

Where in a proper proceeding the land including a discovery shaft has been awarded the applicant, a protestant will not be heard to say that such discovery shaft was sunk on ground embraced within a prior subsisting location.

Gowdy v. Kismet Gold Min. Co., 22 L. D. 624.
American Consol. Min., etc., Co. v. De Witt, 26 L. D. 580.
Mitchell v. Brovo, 27 L. D. 40, p. 41.

Where a protestant did not make his location until after a mineral entry was allowed the Department has authority to order a hearing to determine whether there has been due compliance with the mining law.

Tam v. Story, 16 L. D. 282, p. 284.
Alice Placer Mine, In re, 4 L. D. 314.
Sweeney v. Wilson, 10 L. D. 157.
Devereux v. Hunter, 11 L. D. 214.
Apple Blossom Placer v. Cora Lee Lode, 14 L. D. 641.

A lode claimant can not successfully protest the issue of patent on a placer entry where the mineral character of the land and the required expenditure were properly shown, where such entry has been sustained by the courts.

Meaderville Min. etc., Co. v. Raunheim, 29 L. D. 465, p. 467.
See Dahl v. Raunheim, 132 U. S. 260.
Raunheim v. Dahl, 6 Mont. 167.

6. BURDEN ON PROTESTANT.

A protestant must overcome the legal presumption that a mineral entry is regular and valid and he must establish by a preponderance of the testimony that the applicant has failed to show compliance with the law.

Tangerman v. Aurora Hill Min. Co., 9 L. D. 538.

The burden of proof is upon a protestant to overcome the prima facie case made by an applicant as to the mineral character of the land in controversy.

Hughes v. Ochener, 27 L. D. 396, p. 399.

Where affidavits are presented showing a failure to comply with the mining statutes and the evidence is such as to entitle it to credit and show that the law has not been complied with, a patent ought not to issue, but an investigation should be ordered.

Weinstein v. Granite Mountain Min. Co., 14 L. D. 68, p. 70.

See Bodie Min., etc., Co. v. Bechtel Consol. Min. Co., 1 L. D. 584.

Martin v. Granite Mountain Min. Co., 15 C. L. O. 50.

7. APPEAL.

a. PRACTICE.

The department will suspend action upon appeal until the disposition of the court proceedings over an adverse claim.

Standart, In re, 25 L. D. 262.

Juanita Lode, In re, 26 L. D. 608, p. 609.

On appeal from a decision of the Land Office denying an application to protest a mineral entry, the applicant is not required to serve the entryman with notice thereof.

Gladys A. Min. Co. v. Gross, 24 L. D. 349.

David Foote Lode, In re, 26 L. D. 196.

An appeal from a finding or decision affecting a mining claim may be transmitted directly from the surveyor general to the Land Department.

Golden Empire Min. Co., In re, 36 L. D. 561.

Hanson, In re, 38 L. D. 169.

An appeal will lie from a decision holding insufficient the publication of notice on which a mineral entry is allowed.

Bretell v. Swift, 14 L. D. 697, p. 699.

b. RIGHT TO APPEAL.

A protestant or an adverse claimant alleging an interest adverse to the mining claimant and who shows a failure to comply with the mining laws is entitled to the right of appeal.

Weinstein v. Granite Mountain Min. Co., 14 L. D. 68, p. 70.

See Bright v. Elkhorn Min. Co., 8 L. D. 122.

A protestant against a mineral entry who alleges an adverse interest and noncompliance with law on the part of the entryman and whose application for a hearing on such charge has been denied is entitled to be heard on appeal.

Aspen Consol. Min. Co., In re, 22 L. D. 8, p. 10.

See Weinstein v. Granite Mountain Min. Co., 14 L. D. 68.

Nevada Lode, In re, 16 L. D. 532.

A mineral claimant can not ask the department to say that a protestant is barred by failure to properly adverse within the limited time, unless he establishes the fact which caused the time to begin to run, and a protestant may show that proper steps were not taken to set the statutory period of limitation in motion against him, and to this extent a protestant has the right to appeal.

Bright v. Elkhorn Min. Co., 8 L. D. 122.

See Bright v. Elkhorn Min. Co., 9 L. D. 503.

A protestant with an actual interest in the claim in controversy has the right of appeal.

McNeil v. Pace, 3 L. D. 267.

Martin v. Granite Mountain Min. Co., 15 C. L. O. 50.

C. NO RIGHT TO APPEAL.

A protestant without interest in a mining claim can not appeal as a matter of right.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584.

Cedar Hill Min. Co., In re, 1 L. D. 628.

Branagan v. Dulaney, 2 L. D. 744.

Bell v. Aitkin, 4 C. L. O. 66.

Hussey Lode, In re, 5 L. D. 93.

Bright v. Elkhorn Min. Co., 8 L. D. 122.

Wight v. Tabor, 2 L. D. 738, p. 743.

Smuggler Min. Co. v. Trueworthy Lode Claim, 19 L. D. 356.

Boston Quicksilver Mine, In re, 4 C. L. O. 34.

Boston Hydraulic Min. Co. v. The Eagle Copper, etc., Min. Co., Sickels' Min. Dec. 320.

A mere protestant having no interest in the ground in controversy, but appearing merely as an *amicus curiæ*, has no right of appeal.

Martin v. Granite Mountain Min. Co., 15 C. L. O. 194.

Bright v. Elkhorn Min. Co., 8 L. D. 122.

McGarrahan, In re, 11 C. L. O. 370.

Boston Quicksilver Mine, In re, 4 C. L. O. 34.

Boston Hydraulic Gold Min. Co. v. Eagle Copper, etc., Min. Co., Sickels' Min. L. & D. 320.

A plaintiff having filed no adverse claim during the period of publication must be regarded as a protestant and therefore not entitled to the right of appeal.

Bright v. Elkhorn Min. Co., 8 L. D. 122, p. 125.

See McGarrahan v. New Idria Min. Co., 4 L. D. 422.

Branagan v. Dulaney, 2 L. D. 744.

Dotson v. Arnold, 8 L. D. 439.

A protestant whose application was not made within the time for publication under the mineral entry acquired thereby no right in the premises and has no right to a hearing or to an appeal.

Anderson v. Amador & Sacramento Canal Co., 10 L. D. 572, p. 574.

See Bright v. Elkhorn Min. Co., 8 L. D. 122.

Protestants in the absence of any alleged surface conflict are without interest and are not entitled to the character of litigants, and an appeal taken by them must be dismissed.

Smuggler Min. Co. v. Trueworthy Lode Claim, 19 L. D. 356, p. 358.

See New York Hill Co. v. Rock Bar Co., 6 L. D. 318.

An attempted relocation of a mining claim after the allowance of entry is not an intervening adverse right and such person is a mere protestant without interest and is not entitled to appeal.

Woodman v. McGilvary, 39 L. D. 574, p. 575.

See Marburg Lode Min. Claim, In re, 30 L. D. 202.

I. ENTRY.

1. DEFINITION AND MEANING.
2. EFFECT AND VALIDITY.
3. CONDITIONS PRECEDENT TO ENTRY.
4. DISCOVERY IMPLIED.
5. NOTICE OF APPLICATION NECESSARY BEFORE ENTRY.

6. IRREGULAR ENTRY MAY STAND.
7. REFERENCE TO BOARD OF EQUITABLE ADJUDICATION.
8. CONFLICTING GROUND—PRIORITY OF LOCATION.
9. NONCONTIGUOUS CLAIMS.
10. EQUITABLE OWNERSHIP—TITLE HELD IN TRUST.
11. PAYMENT OF PRICE—EFFECT AND RIGHTS.
12. CONCLUSIVE EFFECT OF ENTRY AND CERTIFICATE.
13. TITLE OPERATES BY RELATION.
14. WHEN ENTRY WILL BE CANCELED.
15. WHEN ENTRY WILL NOT BE CANCELED.
16. PRACTICE AFTER CANCELLATION.
17. CANCELLATION OF ENTRY—EFFECT.

1. DEFINITION AND MEANING.

The term entry means that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country by filing his claim.

Sturr v. Beck, 133 U. S. 541, p. 549.

McGuire v. Brown, 106 Cal. 660, p. 666.

Entry is the mode of acquiring nonmineral lands.

Collins v. Bubb, 73 Fed. 735, p. 739.

Entry of a mining claim is the inscription in the records of the land office on final proof and full payment of the purchase price by an applicant for mineral patent, and is in effect a determination by the land office that the applicant has complied with all legal requirements and is at that time entitled to a patent.

Coal Lands, In re, Copp Min. Lands 345, p. 346.

For a proper interpretation of the qualifications of an applicant to make entry of mineral lands, reference must be had to the statutory provisions of the State in which the lands are situated.

Buena Vista Electric Light Co., In re, 18 C. L. O. 208.

2. EFFECT AND VALIDITY.

An entry of a mining claim under the statute segregates the land from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until the prior entry is officially canceled.

Benson Min., etc., Co. v. Alta, etc., Min. Co., 145 U. S. 428.

Last Chance Min. Co. v. Tyler, 61 Fed. 557, p. 561.

James v. Germania Min. Co., 107 Fed. 597.

McCormack v. Night Hawke & Nightingale Min. Co., 29 L. D. 373.

Batterton v. Douglas Min. Co., 20 Idaho 760, p. 765.

After entry of a mining claim the presumption is in favor of the recognition of the requisite antecedent facts, such as a discovery and the regularity of the proceedings.

Louisville Lode Case, In re, 1 L. D. 548.

The validity of an entry depends upon the facts asserted at the time it is made and not upon anything which the claimant may do or omit to do thereafter.

Harrison, In re, 2 L. D. 767, p. 770.

See American Hill Quartz Mine, In re, 6 C. L. O. 2.

In order to support an entry the proof must show the full ownership of the claim in the entryman.

Repeater and Other Lode Claims, In re, 35 L. D. 54, p. 56.

See Thomas v. Elling, 25 L. D. 495.

Golden & Chord Lode Min. Claim, In re, 31 L. D. 178.

By accepting the entry and confirming it by patent the Government does not determine as to the order of proceeding prior to the entry, but only that all legal requirements have been taken.

Creede & Cripple Creek, etc., *Min. Co. v. Uinta Tunnel Min., etc., Co.*, 196 U. S. 337, p. 354.

The entry of a mining claim properly allowed effectively terminates the right to relocate such claim because of a failure to do the annual assessment work to the same extent as would the resumption of work by a claimant before a relocation.

Nielson v. Champagne Min., etc., Co., 29 L. D. 491, p. 493.

An entry based upon a survey is a waiver of any additional rights claimed by way of amendment of an original mining location, and the additional tract can be regarded as only having been embraced in an independent location which would be subject to all the requirements of the law.

Gilson Asphaltum Co., *In re*, 33 L. D. 612, p. 616.

3. CONDITIONS PRECEDENT TO ENTRY.

The mining laws require certain acts in the nature of conditions precedent to be performed before entry is made, and the validity of the entry depends upon the facts existing at the time it is made and not upon anything which the claimant may thereafter do or omit to do.

Sweeney v. Wilson, 10 L. D. 157, p. 158.

American Hill Quartz Mine, *In re*, 6 C. L. O. 2, p. 3.

An entry may be made and a patent issued for a mining claim to an applicant who was not at the time of the filing of the application the owner of the claim but has since by proper conveyances obtained title thereto.

Lonergan v. Shockley, 33 L. D. 238, p. 241.

See Teller, *In re*, 26 L. D. 484.

Where all the proceedings prior to an entry had reference to the ground claimed and sought to be patented as a mining claim and plats and notices were posted upon the claim as defined by the improvements and corner monuments, the location of the claim will be considered as sufficiently accurate and will cure any defect caused by noncompliance with district regulations in the matter of the width of the location, and especially where there is a formal annulment of such regulations prior to the allowance of the entry.

Childs, *In re*, 10 L. D. 173, p. 176.

The right to a patent to a mining claim is never pursued beyond the entryman.

Harrison, *In re*, 2 L. D. 767, p. 772.

A mere application to make an entry on a lode claim but not properly followed up confers no exclusive right to the premises which others are bound to wait upon indefinitely.

Snow Flake Lode, *In re*, 4 L. D. 30, p. 31.

4. DISCOVERY IMPLIED.

The department would be justified after entry in refusing to inquire whether there had been a discovery in a discovery shaft if it were clear that mineral had been discovered within the limits of the claim and all parties claiming adversely had been given an opportunity to be heard before entry.

Wight v. Tabor, 2 L. D. 738, p. 742.

While one discovery of mineral is sufficient in a placer location of 160 acres when made by an association, yet if any legal subdivision of such tract does not contain

valuable deposits of mineral within the meaning of the statute, it must be excepted from entry.

Ferrell v. Hoge, 27 L. D. 129, p. 131.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 304.

See *Yard*, In re, 38 L. D. 59.

As between the Government and a locator, it is not a vital fact that there was a discovery of mineral before the commencement of any of the steps required to perfect a location, where at the time of the entry everything had been done which entitled the locator to an entry, such as a discovery and a perfect location, and does not justify the Government in rejecting the application because the customary order of procedure had not been followed.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 354.

See *Jones v. Wild Goose Min., etc., Co.*, 177 Fed. 95, p. 99.

Brien v. Moffitt, 35 L. D. 32, p. 42.

An application for a mineral entry will be canceled on the admission of the claimant that no discovery of mineral in rock in place was made at or prior to the time of the application or the hearing.

Smuggler Min. Co. v. Trueworthy Lode Claim, 19 L. D. 356.

5. NOTICE OF APPLICATION NECESSARY BEFORE ENTRY.

There can be no valid entry upon an application for a patent to a mining claim until notice of the application has been lawfully given.

Southern Cross Gold Min. Co. v. Sexton, 31 L. D. 415, p. 417.

There can be no valid entry upon an application for patent for a mining claim where the notice is fatally defective, as such a notice must be rejected and when the notice falls the entry falls also, and the adjudication of the insufficiency of the notice is equivalent to the determination that the entry has been erroneously allowed, and should be canceled.

Southern Cross Gold Min. Co. v. Sexton, 31 L. D. 415, p. 417.

A mineral entry should not be permitted where persons claiming adverse rights did not have actual notice of the pending application and where it is shown that either of the three statutory methods of conveying notice had not been complied with.

Ferguson v. Hanson, 21 L. D. 336, p. 339.

See *Condon v. Mammoth Min. Co.*, 14 L. D. 138.

6. IRREGULAR ENTRY MAY STAND.

Where an entry is irregularly allowed, it may be permitted to remain where the title in the meantime has been perfected.

Woodman v. McGilvary, 39 L. D. 574, p. 576.

See *Teller*, In re, 26 L. D. 484.

Ritter, In re, 37 L. D. 715.

Squires, In re, 40 L. D. 542, p. 544.

A mineral entry which has been prematurely allowed because of an adverse suit may be permitted to stand on the withdrawal of all adverse claims.

Gunnison Crystal Min. Co., In re, 2 L. D. 722, p. 724.

Meyer v. Hyman, 7 L. D. 336.

A mineral entry of a mining claim in the names of several persons some of whom had no interest in the claim at the time of entry may be permitted to stand where they subsequently acquire an interest by valid conveyances.

Teller, In re, 26 L. D. 484.

Auerbach, In re, 29 L. D. 208, p. 211.

Squires, In re, 40 L. D. 542, p. 544.

An entry of land held in reservation, made and intended in good faith or claim of right, will, if the land has since become subject to that class or character of entry, be permitted to remain intact.

Demple v. Coe, 38 L. D. 528, p. 532.

See Dobbe Placer Mine, In re, 1 L. D. 565.

Linville v. Clearwaters, 11 L. D. 356.

Moss Rose Lode, In re, 11 L. D. 120.

Griffin, In re, 11 L. D. 231.

A mineral entry made when land was not subject to appropriation may on the removal of the bar be permitted to stand.

Moss Rose Lode, In re, 11 L. D. 120.

See Schrotberger v. Arnold, 6 L. D. 425.

Newman, In re, 8 L. D. 448.

7. REFERENCE TO BOARD OF EQUITABLE ADJUDICATION.

An entry may be referred to the board of equitable adjudication where the law has been complied with except in the matter of proof of posting the notice, which notice was furnished the department but lost.

Cornell Lode, In re, 6 L. D. 717.

Omaha Gold Min. Co., In re, 3 C. L. O. 163.

See South End Min. Co. v. Tinney, 22 L. D. 19, p. 51.

Entries of mining claims should not be referred to the board of equitable adjudication where there has been a plain undeniable violation of the law relating to such entry; but entries are only referred where the law has been substantially complied with and some error or informality has arisen from ignorance, accident, or mistake.

Peacock Mill Site, In re, 27 L. D. 373, p. 374.

New York Lode & Mill Site Claim, In re, 5 L. D. 513 (denied).

8. CONFLICTING GROUND—PRIORITY OF LOCATION.

A mineral entry that conflicts with an existing prior homestead entry can not properly be allowed by local officers, and the application for the mineral patent should be rejected to the extent of the conflict, or notice should be given to the homestead entryman and an opportunity for hearing afforded.

Elda Min., etc., Co., In re, 29 L. D. 279, p. 280.

Land embraced within a prior location and application of a mineral claimant is not subject to mineral entry by a subsequent locator.

Rocky Lode, In re, 15 L. D. 571, p. 572.

An entry of two overlapping mining claims made on separate discoveries of parallel veins by the same persons will be permitted on the theory that the subsequent location was an abandonment of a prior location to the extent of the overlap, and where such overlap had been expressly excluded.

Golden Link Min., etc., Co., 29 L. D. 384, p. 387.

So long as an entry remains uncanceled a second application for a patent for the same ground can not be allowed.

Harrison, In re, 2 L. D. 767, p. 769.

Where entry of a mining claim is based upon a relocation of an alleged abandoned mining claim positive and complete proof in regard to the abandonment of the prior location is not required.

Manhattan & San Juan Silver Min. Co., 2 L. D. 698.

The fact that a mineral entry will injuriously affect the extralateral rights of an existing lode location is a question for the courts and not for the Land Department where there is no surface conflict.

Beik v. Nickerson, 29 L. D. 662, p. 665.

In case of intersecting lode claims an entry based upon a subsequent location may be allowed for noncontiguous portions of ground.

Silver Queen Lode, In re, 16 L. D. 186.

9. NONCONTIGUOUS CLAIMS.

An entry of a mining claim will not be permitted where its contiguity is broken by a tract carved out of the center of the claim, but if the applicant elects he may abandon either of the pieces and enter the other.

Apple Blossom Placer v. Cora Lee Lode, 21 L. D. 438, p. 439.
See Emmons Min. Co., In re, 18 C. L. O. 254.

A mineral entry may be allowed of a tract of land divided by a patented intersecting lode.

Patten Extension Lode, In re, 15 L. D. 133.
See Griffin, In re, 2 L. D. 736.

10. EQUITABLE OWNERSHIP—TITLE HELD IN TRUST.

Where lode claimants have done all that is necessary under the law for the acquisition of an exclusive right to the possession and enjoyment of their claim it is thenceforth their property and they can obtain at any time a patent upon proof, and until the patent issues the Government holds the title in trust for them, and the ground included within their locations is not open to sale.

Noyes v. Mantle, 127 U. S. 348.
Pike's Peak Lode, In re, 10 L. D. 200, p. 202.
South Star Lode, In re, 20 L. D. 204, p. 206.
Yosemite National Park, In re, 25 L. D. 48, p. 50.
Suessenbach v. First National Bank, 5 Dak. 477, p. 498.
Elliott v. Elliott, 3 Alaska 352, p. 361.
McQuillan v. Tanana Electric Co., 3 Alaska 110, p. 116.
Overgaard v. Westerberg, 3 Alaska 168, p. 173.
Copper River Min. Co. v. McClelland, 2 Alaska 134, p. 143.
Largey, In re, 17 C. L. O. 3.
Pike's Peak Lode, In re, 14 L. D. 47.

By the purchase and entry of a mining claim, the equitable title vests in the purchaser, and his right to a patent is thereby established and duty to perform assessment work ceases.

Benson Min., etc., Co., v. Alta Min., etc., Co., 145 U. S. 428.
McCormack v. Night Hawk & Nightingale Gold Min. Co., 29 L. D. 373.
Neilson v. Champagne Min., etc., Co., 29 L. D. 491, p. 493.

When the right to a patent to a mining claim exists, the full equitable title has passed to the purchaser with all the benefits, immunities, and burdens of ownership, and no third person can acquire from the Government any interests as against the purchaser.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 205.

In case of cash sales when the full price has been paid, or in other cases, where all of the conditions of entry are performed, the full equitable title has passed and only the naked legal title remains in the Government in trust for the applicant, in whom are vested all the rights and obligations of ownership.

Deffebach v. Hawke, 115 U. S. 392, p. 405.
Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428, pp. 432, 434.
Calhoun Gold Min., Co. v. Ajax, etc., Min. Co., 182, U. S. 499.
Aspen Min., etc., Co. v. Rucker, 28 Fed. 220, p. 221.
Hamilton v. Southern Nevada Gold, etc., Min., Co., 33 Fed. 562, p. 566.
Olive Land and Dev. Co. v. Olmstead, 103, Fed. 568, p. 574.
Neilson v. Champagne Min., etc., Co., 111 Fed. 655, p. 657.
Teller v. United States, 113 Fed. 273, p. 282.
Nielsen v. Champagne Min., etc., Co., 119 Fed. 123, p. 125.
Leonard v. Lennox, 181 Fed. 760, p. 762.

- Bretell v. Swift, 14 L. D. 697, p. 699.
 Kern Oil Co. v. Clarke, 30 L. D. 550.
 Deno v. Griffin, 20 Nev. 249, p. 253.
 Allan v. Dunlap, 24 Oreg. 229, p. 234.
 Duffy v. Mix, 24 Oreg. 265, p. 268.
 See Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348, p. 349.
 Union Mill & Min. Co. v. Dangberg, 24 Fed. Cas. 590.
 McCormack v. Night Hawk & Nightingale Gold Min. Co., 29 L. D. 373, p. 377.
 Kern Oil Co. v. Clarke (on review), 31 L. D. 238.
 Murray v. Montana Lumber & Mfg. Co., 25 Mont. 14, p. 22.

Where a mineral claimant has satisfied the requirements of this section and applies for a patent and carries his patent proceedings to completion by making entry during the calendar year in which the period of publication of notice of application for a patent ends, he thereby acquires an equitable title and thereby obviates the necessity for observing for that year and prospectively the requirements with respect to annual expenditures, but if he fails to make entry within such calendar year then his title or interest remains throughout that year purely possessory in character, and unless entry is prevented by a suit his possessory right is dependent for its maintenance and continuance to the succeeding calendar year upon the prescribed annual expenditure with equal liability to forfeiture by relocation as though no patent proceedings had been instituted.

- Lucky Find Placer Claim, In re, 32 L. D. 200, p. 202.
 See Cleveland v. Eureka No. 1 Gold Min., etc., Co., 31 L. D. 69.

The law severs the right of possession and enjoyment of a mining claim from the title, and until the right to a patent has been perfected and an equitable title acquired by full compliance with the law the Government retains the title to all mines within the public domain.

- O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 110.

The patentee of a mining claim, on which he has made valuable improvements, has an equitable title, when the patent fails by reason of mistake in the description, which will prevail against one who with notice attempts to acquire the legal title to the claim.

- Garrard v. Silver Peak Mines, 82 Fed. 578, p. 586.

The right to purchase from the United States the premises upon which a mining location has been made by the locator of the same is not an equitable estate in the premises.

- Black v. Elkhorn Min. Co., 49 Fed. 549, p. 552.

An equitable estate in a mining claim when clearly established will be enforced in equity.

- Lakin v. Sierra Buttes Min. Co., 25 Fed. 337.
 Hunt v. Patchin, 35 Fed. 816.
 Book v. Justice Min. Co., 58 Fed. 106.

11. PAYMENT OF PRICE—EFFECT AND RIGHTS.

Where a contract of purchase for mineral land is completed by the payment of money and the issuance of the certificate, the purchaser acquires a vested interest of which he can not be subsequently deprived, and the land ceases to be a part of the public domain and is no longer subject to the operations of the statute.

- Harrison, In re, 2 L. D. 767, p. 770.
 Sweeney v. Wilson, 10 L. D. 157, p. 158.
 Leary v. Manuel, 12 L. D. 345.
 See Moss Rose Lode, In re, 11 L. D. 120.

When the required proofs are made by a locator or coowner of a mining claim and the purchase money paid the equitable title of the purchaser is complete and the patent

when issued is evidence of the regularity of the previous acts and relates to the date of entry and to the exclusion of all intervening claims.

American Hill Quartz Mine, In re, 6 C. L. O. 2 (reported as Smith & Van Clief).

When the price of a location or claim is paid, the right of the locator to a patent immediately arises, and any delay in the administration of affairs in the Land Department does not diminish the rights flowing from such purchase, nor cast any additional burdens on the purchaser or expose him to the assaults of third persons.

Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428, p. 431.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 574.

Teller v. United States, 113 Fed. 273, p. 282.

Payment for mineral lands or a mining claim gives the claimant an equitable title thereto and entitles him to a patent, and he is not required to wait for the actual issuance of a patent before exercising all the incidents of ownership.

Teller v. United States, 113 Fed. 273, p. 279.

See Deffeback v. Hawke, 115 U. S. 392.

The title to a mining claim is a legal title, and until a locator of such a claim has done everything the United States statutes requires upon an application for a patent and has paid the purchase price thereof, he can not be said to have any equitable title in that estate not vested by the mining location.

Belk v. Meagher, 3 Mont. 65, p. 79.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 552.

A final certificate issued by a receiver after the submission of final proof and payment of the purchase price is for many purposes the equivalent of a patent.

Brown v. Gurney, 201 U. S. 184, p. 193.

There is no difference as to the rights of the parties where a mining location was made after the entry and payment for the land, but before patent issued, and where the mining location was made after a patent issued, as the purchaser became the equitable owner of the land when it was entered and paid for.

Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348, p. 349.

See Hamilton v. Southern Nevada Gold, etc., Min. Co., 33 Fed. 562, p. 566.

Union Mill & Min. Co. v. Dangberg, 24 Fed. Cas. 590.

12. CONCLUSIVE EFFECT OF ENTRY AND CERTIFICATE.

An entry when sustained by a patent is conclusive evidence that at the time of such entry there had been a valid location, and such valid location implies a discovery.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 353.

In actions at law a certificate of entry of a mining claim, like a patent, is conclusive of the title.

McEvoy v. Hyman, 25 Fed. 539, p. 540.

The doctrine of freedom from collateral attack applies where final entry has been made and certificate issued.

Brown v. Gurney, 201 U. S. 184, p. 193.

Hamilton v. Southern Nevada Gold, etc., Min. Co., 33 Fed. 562, p. 566.

A receiver's receipt and a register's certificate of purchase for a mining claim can not be assailed on the ground that the holder had not, on the abandonment of a part of his mining claim in an action contesting his right, caused a new survey to be made.

Last Chance Min. Co. v. Tyler Min. Co. 61 Fed. 557, p. 561.

See Hamilton v. Southern Nev., etc., Min. Co., 33 Fed. 562, p. 566.

Aurora Hill, etc., Min. Co. v. Eighty-Five Min. Co., 34 Fed. 515.

Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428.

13. TITLE OPERATES BY RELATION.

See p. 415.

The title to a mining claim established by a receiver's receipt and a register's certificate relates back to the date of the original location.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 562.

Where an entry and final certificate of purchase of a mining claim are obtained by compliance with the public land laws, the right of the entryman or purchaser to a patent is complete, and this right will not be impaired by any delay in issuing the patent, and the patent when issued relates back to the date of entry.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 16.

See *Amador Medean Gold Min. Co. v. South Spring Hill Gold Min. Co.*, 36 Fed. 668.

14. WHEN ENTRY WILL BE CANCELED.

An entry must be canceled where the requisite statutory expenditure is not shown.

Juno and Other Lode Claims, In re, 37 L. D. 365, p. 369.

See *Highland Marie & Manilla Lode Min. Claims*, In re, 31 L. D. 37.

Tough Nut No. 2, etc., Min. Claims, In re, 36 L. D. 9.

Batterton v. Douglas Min. Co., 20 Idaho 760, p. 763.

An entry allowed prior to the final disposition of adverse proceedings must be canceled where the adverse claims are undisposed of.

Meyer v. Hyman, 7 L. D. 83.

Great Eastern Min. Co. v. Esmeralda, 2 L. D. 704.

Aspen Mountain Tunnel Lode, No. 1, In re, 26 L. D. 81, p. 82.

An entry of a mining claim allowed prior to the final disposition of adverse proceedings is irregular and must be canceled where it appears that such adverse claim is still undetermined.

Brown v. Bond, 11 L. D. 150, p. 154.

See *Meyer v. Hyman*, 7 L. D. 83.

Richmond Min. Co. v. Rose, 114 U. S. 576.

The provision of this section that in the absence of an adverse claim it shall be assumed that the applicant is entitled to a patent does not prevent the Land Department from canceling an entry for defects in the proof.

Mineral Farm Min. Co. v. Barrick, 33 Colo. 410, p. 415.

See *Hawley v. Diller*, 178 U. S. 476.

Beals v. Cone, 188 U. S. 184.

Beals v. Cone, 27 Colo. 473.

Where an application for patent or the affidavit as to posting the notice on the land is defective in substance, or where they are not properly verified, then the entry must be canceled.

Juno and Other Lode Claims, In re, 37 L. D. 365, p. 369.

See *Mojave Min., etc., Co. v. Karma Min. Co.*, 34 L. D. 583.

El Paso Brick Co., In re, 37 L. D. 155.

15. WHEN ENTRY WILL NOT BE CANCELED.

A mineral entry should not be held for cancellation upon the report of a special agent, but a hearing should be duly ordered and evidence submitted showing the illegality of the entry.

Bush, In re, 2 L. D. 788.

Pearsall, In re, 6 L. D. 227.

When local officers, upon a showing deemed sufficient by them, have allowed an entry after the expiration of the calendar year in which publication of notice of appli-

cation for patent was published, and where there is no intervening adverse claim, then the entry should not be canceled.

Woodman v. McGilvary, 39 L. D. 574, p. 577.

A mineral entry should not be canceled unless it is affirmatively shown that the entryman had notice of the intention of the department to cancel the entry, and an entry so improperly canceled should be reinstated and on such reinstatement an opportunity afforded a transferee to show the facts as to his compliance with the statute.

San Juan Placer, In re, 12 L. D. 125, p. 126.

McGowan v. Alps Consol. Min. Co., 23 L. D. 113, p. 115.

Beals v. Cone, 27 Colo. 473, p. 483.

See Peoria & Colorado Min., etc., Co. v. Turner, 20 Colo. App. 474, p. 483.

An allegation that a mineral claimant failed to comply with local laws and regulations in the matter of posting location notices and sinking discovery shafts is material only in a proceeding where adverse claimants are endeavoring to establish superior rights to the ground in conflict; and while such failure subjects a mining claim to relocation before entry, yet it is not a ground for the cancellation of an entry in the absence of an adverse claim legally asserted.

Hughes v. Ochsner, 27 L. D. 396, p. 398.

An entry duly made on an application for patent for a mining claim where the applicant shows due compliance with all the statutory requirements, including the performance of annual labor and the proper publication and posting of notice, the payment of the price, and issuance of the final receipt, can not be canceled by the Land Department and the claim made subject to relocation solely for the reason that the affidavit in proof of posting the notice on the claim was made before an officer residing outside of the land district, as such irregularity did not render the patent the patent proceedings void and the Land Department acquired jurisdiction upon giving notice of publication in the newspaper, by posting in the land office, and by posting on the land itself, and the irregularity in complying with the mere directory provision as to the proof, could be cured, and on being cured the patent could issue, and the cancellation of the entry being based on an error of law, did not operate to deprive the applicant of its property in the mining claim, nor did the fact that the applicant instituted a new proceedings in order to secure patent, destroy the rights with which he had become invested by full compliance with the requirements of the statute.

El Paso Brick Co. v. McKnight, 233 U. S. 250, p. 258.

16. PRACTICE AFTER CANCELLATION.

Where an entry of a lode mining claim has been canceled on the ground that a claimed common improvement did not benefit the particular claim for which entry was made, it is not necessary for the claimant to file a new application for a patent, or to furnish new proofs, except to give new notice of the application by publication and posting and file the necessary proofs thereof, and the certificate of the surveyor general as to expenditure, where the proofs on file are otherwise sufficient, and it is claimed that the required expenditure has then been made.

Highland Marie & Manilla Lode Min. Claims, In re, 31 L. D. 37, p. 39.

See Jaw Bone Lode v. Damon Placer, 34 L. D. 72, p. 73.

Where a mining location was forfeited and cancellation duly made of record, such entry should not be reinstated as against persons who in good faith relocated the ground and have ever since been in continuous and undisputed possession and have made large expenditures in the improvement and development of the ground as a mining claim.

Lillian Lode, In re, 26 L. D. 262.

The rule of the department is that after a decision by the Land Office, holding an entry for cancellation, an application to enter may be received during the time allowed for appeal from such decision, but should not be made of record until the rights of the former entryman are finally determined.

United States v. Steenerson, 50 Fed. 504.

Reed, In re, 6 L. D. 563.

Gauger, In re, 10 L. D. 221, p. 222.

Perrott v. Connick, 13 L. D. 598.

17. CANCELLATION OF ENTRY—EFFECT.

The Commissioner of the General Land Office has no power to cancel a mineral entry.

Rebecca Gold Min. Co. v. Bryant, 31 Colo. 119, p. 126.

The cancellation of an entry for cause operates to annul the entire proceedings for patent.

Lowe, In re, 9 C. L. O. 192.

The cancellation of an entry of a mining claim for failure to perform the antecedent statutory requirements necessary to authorize a sale by the local officers does not affect the possessory title of the locator but leaves his right of possession under his location and compliance of law as to yearly improvements intact, with the power to sell such possessory title as if no entry had been attempted.

Magruder, In re, 1 L. D. 526.

The cancellation of a mineral entry alone is not determinative of another application for patent, and the facts found upon which such cancellation was based are not admissible to support an adverse claim against a second application for the same premises.

Beals v. Cone, 27 Colo. 473, p. 482.

See Branagan v. Dulaney, 2 L. D. 744.

Clipper Min. Co., In re, 22 L. D. 527.

Clipper Min. Co. v. Eli Min., etc., Co., 29 Colo. 377.

J. PATENT—ISSUANCE.

1. SCOPE AND PURPOSE OF SECTION.
2. ISSUANCE AND PURPOSE OF PATENT.
3. ISSUANCE IN NAME OF APPLICANT OR LOCATOR.
4. CORPORATION ENTITLED TO PATENT.
5. COMPLIANCE WITH STATUTES NECESSARY.
6. DESCRIPTION OF LAND IN PATENT.
7. PART OF SEVERED CLAIM PATENTED.
8. GROUP OF CLAIMS INCLUDED IN ONE PATENT.
9. NOT ISSUED FOR GROUND PATENTED OR LAND EXCLUDED.
10. PATENT TO COOWNER.
11. PATENTEE HOLDING AS TRUSTEE.
12. VESTED RIGHT TO PATENT.
13. PATENT MERGES INFERIOR ESTATE.
14. PATENT FOR CONTIGUOUS OR SEPARATE CLAIMS.
15. PATENT FOR NONCONTIGUOUS TRACTS.
16. PATENT FOR PLACER CLAIM—EFFECT AND RIGHTS OF PATENTEE.

17. PATENT FOR LODE WITHIN PLACER CLAIM.
18. PATENT ISSUES FOR SURFACE GROUND AND VEINS AND LODES.
19. EFFECT OF ISSUANCE AS A DETERMINATION OF QUESTIONS.
20. EFFECT AS GRANT OF SUBSURFACE.
21. FORCE AND EXTENT AS A CONVEYANCE.
22. AS A GRANT OF EXTRALATERAL RIGHTS.
23. PRESUMPTIONS AS TO REGULARITY AND VALIDITY OF PRECEDENT STEPS.
24. AS EVIDENCE OF ACTS AND RIGHTS.
25. EFFECT ON DATE OF LOCATION OR PROCEEDINGS.
26. PATENT OPERATES BY RELATION.
27. RESERVATIONS IN PATENT—LIMITATION AND EFFECT.
28. CONCLUSIVENESS.
29. QUESTIONS NOT CONCLUDED BY PATENT.
30. NOT SUBJECT TO COLLATERAL ATTACK.
31. VOID PATENT.
32. VOID PATENT IMPEACHED COLLATERALLY.
33. STRANGERS MAY NOT ATTACK PATENT.
34. CORRECTING MISTAKE IN PATENT—RECONVEYANCE AND REISSUE.
35. CANCELLATION AND VACATION.
 - a. GENERAL PROVISIONS AND GROUND.
 - b. CANCELLATION FOR FRAUD.
36. PATENT UNDER HOMESTEAD LAW NOT DEFEATED.
37. PATENT SUBJECT TO PRIOR TUNNEL SITE.
38. TITLE SUBJECT TO VESTED WATER RIGHTS.

1. SCOPE AND PURPOSE OF SECTION.

This section provides for the issuance of patents for claims that have been located in conformity with law.

Branagan v. Dulaney, 2 L. D. 744, p. 750.

See *Wolfley v. Lebanon Min. Co.*, 4 Colo. 112, p. 116.

This section contemplates that a patent for mineral land can only be obtained for the purpose of carrying on the industry of mining.

Buena Vista Electric Light Co., In re, 18 C. L. O. 208.

Generally a patent is necessary in order to pass a perfect and consummate legal title to a mining claim as a part of the public domain.

South Star Lode, In re, 20 L. D. 204, p. 207.

This section does not apply to the case of a party who has a prior patent to the land which may be the subject of controversy before the receiver and register of the land office.

McKinley v. Wheeler, 130 U. S. 630, p. 634.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 301.

Neither the President nor any other officer has power to dispose of the public domain or to sign or cause the seal of the Land Office to be affixed to patents other than such as is conferred by the statutes of the United States.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 299.

This section does not refer to easements or other rights nor the acquisition of title generally, but only to land claimed and located for valuable mineral deposits.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 356.

The policy of the law requires all rights and equities to mining claims to be adjusted prior to the issuance of the patent, to the end that the patent may be impregnable against all comers.

Lee v. Stahl, 9 Colo. 208, p. 211.

2. ISSUANCE AND PURPOSE OF PATENT.

A patent for mineral lands can only issue under the acts of Congress relating to the disposition of mineral lands on proof that they are such.

Van Horn v. State, 5 Wyo. 501, p. 509.

See *Gregory v. Pershbaker*, 73 Cal. 109, p. 116.

A patent for a mining claim is properly issued where the final proofs are complete and no adverse claim has been filed, or where an adverse claim has been abandoned.

Smoke House Lode, In re, 4 L. D. 555, p. 556.

The purpose of a patent for a mining claim is to do away with the necessity of going back to the facts upon which the patent is based.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 940.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 665.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657, p. 662.

See *Iron Silver Min. Co. v. Campbell*, 17 Colo. 267.

Chambers v. Jones, 17 Mont. 156.

A mineral patent should not be granted unless the existence of mineral in such quantities as would justify expenditure in the effort to obtain it is established as a present fact.

Winters v. Bliss, 14 L. D. 59, p. 62.

A patent may be obtained by mineral claimants for lands claimed by them upon proper proceedings and a showing that at the date of a town-site entry the lands were known to be valuable for mineral and such lands were possessed by them by virtue of a compliance with law, notwithstanding the issuance of town-site patent.

Nome & Sinook Co., v. Townsite of Nome, 34 L. D. 102, p. 104.

A citizen may acquire any one of three possible estates in mineral lands upon the public domain: (1) A location in compliance with the statute giving a possessory title only; (2) after making the location he may comply with the requirements of law and pay the required purchase price, thus acquiring the equitable title; and (3) he may then proceed and obtain a patent, thereby acquiring the legal title.

United States v. Rizzinelli, 182 Fed. 675, p. 681.

Where there is no adverse claim to an application for a patent for a mining claim the issuing of the patent is a matter between the Government and the applicant.

Snow Flake Lode, In re, 4 L. D. 30.

The United States gratuitously grants the privilege of mining and locating mining claims to its citizens, but it does not give away the land containing such minerals, but will sell the same to the locator if he desires to purchase on the terms fixed by the statute.

Teller v. United States, 113 Fed. 273, p. 280.

Land may be patented for other purposes unless it is shown to be more valuable for mining than for such other purposes.

Johns v. Marsh, 15 L. D. 196, p. 197.

Davis v. Weibbold, 139 U. S. 507.

Magalia Gold Min. Co. v. Ferguson, 6 L. D. 218.

Abercrombie, In re, 6 L. D. 393.

Downs, In re, 7 L. D. 71.

Cutting v. Reininghaus, 7 L. D. 265.

Creswell Min. Co. v. Johnson, 8 L. D. 440.

Laney, In re, 9 L. D. 83.

Winters v. Bliss, 14 L. D. 59, p. 62.

Patent can not be issued for a mining claim under proceedings had upon a false survey and publication.

Hagland, In re, 1 L. D. 593, p. 595.

The fact that the Government permits locators of mining claims to extract the minerals therefrom, and that this right constitutes property which is recognized by legislatures and courts, does not affect the true title to the property which remains in the United States where its offer to sell has not been accepted.

Black v. Elkhorn Min. Co., 52 Fed. 859, p. 861.

A patent is evidence of the series of proceedings recited therein and is a solemn record of the action and judgment of the Government with respect to the title of the claimant.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 299.

See McGarrahan v. New Idria, etc., Co., 49 Cal. 331.

This section makes no exception of claims located after failure of a former claimant and does not prescribe a different manner of proceeding from that required on an original location and the proceedings for patent is otherwise similar to that of an original location.

Seaton Min. Co. v. Davis, Copp's Min. Lands 296, p. 297.

A patent from the United States Government for lands as agricultural lands passes no interest in or title to mining claims upon the land or to known deposits of the precious metals.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 405.

See Gold Hill, etc., Min. Co. v. Ish, 5 Oreg. 104.

3. ISSUANCE IN NAME OF APPLICANT OR LOCATOR.

Generally the final certificate and patent for a mining claim should issue to the applicant in whose name the proceedings are prosecuted, and not to his heirs in case of his death pending the proceedings.

Woodman v. McGilvary, 39 L. D. 574, p. 576.

Graham, In re, 40 L. D. 128, denying Tripp v. Dunphy, 28 L.D. 14.

It is a common practice to obtain patents from the Government in the names of the original locators of a mining claim without regard to intervening changes in right of ownership; and a mining company so obtaining a patent in the name of the original locator is not estopped from asserting that the interest of one of such patentees had been forfeited by his coowners for failure to perform or contribute to the performance of the assessment work.

Van Sice v. Ibex Min. Co., 173 Fed. 895, p. 898.

See Turner v. Sawyer, 150 U. S. 578, p. 587.

A patent shall issue only to the party entitled to the possession of the claim and to such portion only of the claim as the applicant shall appear from the decision of the court to rightfully possess.

Northwestern Lode & Mill Site Co., In re, 8 L. D. 437, p. 438.

Possession is one of the elements of title and if found to be in one other than the claimant it is a bar to the issuance of a patent.

Shafer v. Constans, 3 Mont. 369, p. 371.

Becker v. Central City, 2 C. L. O. 98.

4. CORPORATION ENTITLED TO PATENT.

A patent for a mining claim may be issued on the application of a corporation, though the location of the claim was made by an individual, where the location was made for and in behalf of such corporation.

Sold Again Fraction Min. Lode, In re, 20 L. D. 58.

Fargo Group No. 2 Lode Claims, In re, 37 L. D. 404, p. 406.

Corporations are intended to be admitted to all the benefits of the mining laws.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 102.

5. COMPLIANCE WITH STATUTES NECESSARY.

No title from the Government to mineral lands can be acquired in any other way than as prescribed by this statute.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 38.

The right to obtain patent to a mining claim depends upon the making of a location or upon having held possession during the period of the statute of limitations; but the making of the location and the time for making it do not depend upon the section regulating the proceedings upon application for patent which the claimant may never institute.

Nash v. McNamara, 30 Nev. 114, p. 138.

A perfected mining claim is the property of the locator and he needs only a patent to render his title perfect, and this can be obtained at any time upon proof of performance of the acts required by the statute, and the Government in such case holds the title in trust for the locator, and the ground is not open to sale.

Piru Oil Co., In re, 16 L. D. 117, p. 119.

Noyes v. Mantle, 127 U. S. 348, p. 351.

The Government can not grant its patent to a mining claim except on compliance with the law by those seeking it.

United States v. Rumsey, 22 L. D. 101.

Where the locator shows that he has performed all the requirements of the law, he has a vested right to mineral patent.

American Hill Quartz Mine, In re, 5 C. L. O. 114.

Cordel Placer Mine, In re, 13 C. L. O. 29.

See Gold Blossom Mine, In re, 2 L. D. 767.

The payment of the purchase money is made a condition precedent to the issuance of a patent.

Gillis v. Downey, 85 Fed. 483, p. 487.

Patent should not issue for a mining claim where it is shown that the applicant has not complied with the mining statutes.

Bodie Tunnel and Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 593.

Where third persons file affidavits showing an applicant has failed to comply with the mining statutes, a patent should not be issued, but the department should order an investigation as between the Government and the applicant to determine the character of the land.

Bodie Tunnel and Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 589.

See Bright v. Elkhorn Min. Co. 8 L. D. 122.

Tangerman v. Aurora Hill Min. Co., 9 L. D. 538.

Nichols v. Becker, 11 L. D. 8.

McMurdy v. Streeter, Copp's Min. Lands 133.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 49.

Continental Gold, etc., Min. Co. v. Gage, 10 L. D. 534.

A patent will not issue on an application where the land on which are situated a discovery shaft and improvements is expressly excepted therefrom and where the proof fails to show a discovery or the existence of mineral on the claim as entered, or the requisite expenditure for the benefit thereof.

Antediluvian Lode & Mill Site, In re, 8 L. D. 602.

Independence Lode, In re, 9 L. D. 571, p. 572.

Lone Dane Lode, In re, 10 L. D. 53, p. 54.

The allegation that there has been no discovery of any lode or vein in place bearing gold, silver, or other mineral upon a mining claim, and that \$500 worth of labor has not been performed or improvements made for the development thereof is a proper subject of inquiry by the Government, as the existence of a valuable mineral-bearing lode or vein and the expenditure of \$500 in labor and improvements are both conditions to the patenting of the land as a lode claim under the mining laws.

Hughes v. Ochamer, 27 L. D. 396, p. 398.

Rupp v. Healey, 38 L. D. 387, p. 393.

A patent for a mining claim may be defeated by showing that the original location was void because the boundaries were not properly marked on the ground or because no vein was discovered, or because the law in other respects was not complied with, and also, the purpose of the patent was to do away with the necessity of going back to the facts upon which it is based.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 52.

See Doe v. Waterloo Min. Co., 54 Fed. 935, p. 946.

The fact that a few tons of mineral-bearing rock have been taken from a mining claim will not entitle the locator to a patent where there has been no actual discovery of a vein or lode within the limits of the claim.

Waterloo Min. Co. v. Doe, 56 Fed. 685, p. 687.

Whether a particular vein bearing gold, silver, cinnabar, lead, or other valuable deposit is one that a discoverer could obtain title thereto under this and other sections is a question of fact to be determined as such.

Iron Silver Min. Co. v. Mike & Starr, etc., Co., 143 U. S. 394, p. 404.

The mere suspension of a mineral entry for the purpose of requiring compliance with regulations does not destroy the force of the certificate of entry or enable third persons to attack its validity.

Gurney v. Brown, 32 Colo. 472, p. 484.

See Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557.

6. DESCRIPTION OF LAND IN PATENT.

A patent can not properly issue for a mining claim unless the land applied for is specifically described in the publication, or at least the description must be so certain that persons interested can not be misled thereby.

Preston, In re, 10 C. L. O. 34.

A patent is issued for the land described in the application, and the priority of right to the land is all that is necessarily determined in an adverse suit.

Lawson v. United States, 207 U. S. 1, p. 16.

7. PART OF SEVERED CLAIM PATENTED.

Where a mining claim has been severed, a patent may be issued for the part of such claim within which a discovery was made, where the requirements of the mining laws have been complied with, without regard to the remainder of such claim.

Pittsburg-Nevada Min. Co., In re, 39 L. D. 523, p. 524.

See Gwillim v. Donnellan, 115 U. S. 45.

Gilson Asphaltum Co., In re, 33 L. D. 612.

The sale or surrender of a portion of a vein or lode originally embraced in the discovery and location will not affect the right to a patent for another portion of such location where there are no conflicting rights.

Hagland, *In re*, 1 L. D. 593, p. 595.

A locator of a mining claim by obtaining patent for part of his claim does not thereby admit that the remainder is held by a superior title, nor does this debar him from contesting the title to the remainder of the claim.

Miller v. Hamley, 31 Colo. 495, p. 501.

See Van Zandt v. Argentine Min. Co., 2 McCrary 159.

Where an applicant for a patent, on the filing of an adverse claim contesting the applicant's right to patent for certain ground in conflict, accepts a patent for the undisputed ground, such acceptance is not a waiver of his right to contest the part described in the adverse claim.

Fox v. Mackay, 1 Alaska 329, p. 334.

See Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 633.

8. GROUP OF CLAIMS INCLUDED IN ONE PATENT.

Neither the statute nor the reason of the thing prevents an individual from acquiring by purchase the ground located by others and adding it to his own, and securing a patent therefor as an entirety.

Smelting Co. v. Kemp, 104 U. S. 636, p. 648.

Overruling *St. Louis Smelting Co. v. Kemp*, 21 Fed. Cas. 205, and *St. Louis Smelting Co. v. Ray*, 21 Fed. Cas. 207.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 664.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657, p. 660.

Cook v. Klonos, 164 Fed. 529, p. 538.

Harrison, *In re*, 2 L. D. 767, p. 772.

Big Black Foot Milling Co. v. Blue Bird Min. Co., 19 Mont. 454, p. 456 (distinguishing *Smelting Co. v. Kemp*, supra).

The statute limiting the extent of mining lands which one person may locate is deemed sufficient to prevent an accumulation of such land in the hands of one person, and the statute was not intended to limit the acquisition by purchase of any number of mining claims and a separate patent for each location thus acquired is not necessary.

Smelting Co. v. Kemp, 104 U. S. 636, p. 654.

A patent may be issued for mineral lands consisting of an aggregation of small quartz mining claims located under the local mining rules and regulations where such claims were subsequently conveyed to the applicant for the patent, and the right to thus combine such claims and obtain a patent therefor is not impaired by the fact that the proceedings on which the patent was issued purported to have been instituted and carried out for the acquisition of a single quartz mining claim.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 820.

Contiguous mining ground may be embraced in one patent as no limitation is upon the sale of the ground located nor upon the number of locations which may be acquired through purchase nor upon the number which may be included in a patent.

Williams, *In re*, 15 L. D. 532, p. 533.

Smelting Co. v. Kemp, 104 U. S. 636.

A separate patent is not necessary for each location to insure the required expenditure of labor upon it, as the provisions of section 2324 relate to expenditures before a patent is issued, and proof of such expenditures is not changed nor the requirement affected whether the application be for a patent for one claim or for several claims held in common.

Smelting Co. v. Kemp, 104 U. S. 636, p. 654.

Mackie, *In re*, 5 L. D. 199, p. 201.

See *Copper Glance Lode, In re*, 29 L. D. 542, p. 546.

A party can not unite in one application for patent quartz claims, nonmineral lands, town lots, water rights, etc.

Smelting Co. v. Kemp, 104 U. S. 636, p. 648.

Big Black Foot Milling Co. v. Blue Bird Min. Co., 19 Mont. 454, p. 456.

9. NOT ISSUED FOR GROUND PATENTED OR LAND EXCLUDED.

No patent can issue for any portion of a vein or lode lying within surface ground already patented.

Hagland, In re, 1 L. D. 593, p. 595.

A patent will not be issued for a lode claim where it is shown that the discovery shaft and the improvements claimed are within the limits of a town site and upon land which was expressly excluded from the application, and where the proof fails to show either the discovery or existence of mineral on the unexcluded ground embraced within such application or the requisite expenditure of \$500 for the benefit of such claim or ground.

Antediluvian Lode & Mill Site, In re, 8 L. D. 602, p. 604.

See Hidden Treasure Lode, In re, 29 L. D. 156, p. 157.

Trophy Min. Co., In re, 16 C. L. O. 258.

A person is not permitted to enter a patented lode claim and make location of the ground embraced in such patent though he owns a discovery shaft within the patented ground, but which is excluded from the patent, unless positive and convincing proof is offered to show that such location is upon a vein separate and distinct from the vein or lode in the patented claim.

Griffin, In re, 2 L. D. 735, p. 736.

10. PATENT TO COOWNER.

One of several coowners is not entitled to patent in his individual name.

Liddia Lode Min. Claim, In re, 33 L. D. 127, p. 129.

See Thomas v. Elling, 25 L. D. 495.

Before a patent can issue to the coowners of a mining claim, where it is asserted that one coowner failed to perform his part of the assessment work, the applicants for such patent must show the manner of serving notice on the delinquent coowner, and that such delinquent coowner did not pay his proportion of the required assessment work.

Grampian Lode, In re, 1 L. D. 544,

See Turner v. Sawyer, 150 U. S. 578.

Cotenants of a mining claim stand in a certain relation to each other of mutual trust and confidence, and neither will be permitted to act in hostility to the other in reference to the joint estate, and one such tenant in common can not proceed surreptitiously and in disregard of the rights of his cotenant to acquire a patent to a mining claim to the exclusion of such cotenant.

Turner v. Sawyer, 150 U. S. 578, p. 586.

See Grampian Lode, In re, 1 L. D. 544.

Where one of a number of cotenants in a mining claim makes application for patent and the local officers assume jurisdiction and authorize publication of notice, a claimant under a rival location must adverse, in the manner prescribed, or he will be held to have waived his claim to the area.

Ritter, In re, 37 L. D. 715, p. 717.

Overruling Lackawanna Placer Claim, In re, 36 L. D. 36.

A coowner of a mining claim who claims under a patent proceeding and who seeks a reinstatement of a canceled entry thereby ratifies and confirms the authority exercised by his coowner in the original application for the patent though such coowner acted in the first instance without authority.

Oscar Lode Claim, In re, 32 L. D. 228, p. 232.

11. PATENTEE HOLDING AS TRUSTEE.

Where a patent is wrongfully acquired the patentee holds it in trust for the true owner and a bill in equity will lie to enforce such trust.

Turner v. Sawyer, 150 U. S. 578, p. 586.
Mills v. Hart, 24 Colo. 505, p. 508.

A patent may issue as applied for though other persons subsequently acquire an interest in the claim, and in such case the patentee will hold the title in trust for the other persons interested.

Brady v. Harris, 29 L. D. 426, p. 434.
See Turner v. Sawyer, 150 U. S. 578.

A mere survey and futile application for patent for a mining claim by a third person for part of the same claim is no reason for withholding a patent on a proper application.

Snow Flake Lode, In re, 4 L. D. 30, p. 31.

A mineral claimant must show his equity is superior in order to have the holder of the legal title of a mining claim declared a trustee as between himself and a town-site occupant.

Pierce v. Sparks, 4 Dak. 1, p. 3.
See Smelting Co. v. Kemp, 104 U. S. 636, p. 647.
Steel v. Smelting Co., 106 U. S. 447, p. 454.
Boggs v. Merced Min. Co., 16 Cal. 279, p. 365.
Nessler v. Biglow, 60 Cal. 98.

12. VESTED RIGHT TO PATENT.

The mining laws create three distinct classes of title: (1) Title in fee simple; (2) title by possession; (3) the complete equitable title. The first is indefeasible; the second is a title in the nature of an easement and may be defeated at any time by a failure to perform the annual assessment work. The third accrues immediately from purchase, as the entry entitles the purchaser to a patent, and the right to a patent once vested is equivalent to a patent issued.

Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428, p. 430.
Fulkerson v. Chisna Min., etc., Co., 122, Fed. 782, p. 786.
O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 110.
McCormack v. Night Hawk & Nightingale Gold Min. Co., 29 L. D. 373, p. 377.

13. PATENT MERGES INFERIOR ESTATE.

When a patent has been executed and delivered to the locator of a mining claim, in the absence of fraud or mistake the estate known as the mining claim is merged in the greater estate that is conveyed by virtue of the patent.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 553.

When a patent issues the mining claim becomes merged in the paramount title and perishes, and there is no longer any estate in the mining claim as such, or as property to which dower can attach.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 554.

The only distinction between a patentee of a mining claim and a mineral locator is in the ownership of the fee.

Forbes v. Gracey, 94 U. S. 762, p. 766.
Duggan v. Davey, 4 Dak. 110, p. 123.
See Pacific Min., etc., Co. v. Spargo, 16 Fed. 348.
Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 114.
McCormick v. Varnes, 2 Utah 355, p. 362.

A patentee of a mining claim obtains the Government title to the entire land, soil and mineral.

Forbes v. Gracey, 94 U. S. 762, p. 767.

Duggan v. Davey, 4 Dak. 110, p. 123.

See Pacific Min., etc., Co. v. Spargo, 16 Fed. 348.

Wolfey v. Lebanon Min. Co., 4 Colo. 112, p. 114.

McCormick v. Varnes, 2 Utah 355, p. 362.

14. PATENT FOR CONTIGUOUS OR SEPARATE CLAIMS.

If one person should acquire any number of contiguous claims by purchase there is no reason why he should not be equally entitled to enter them all by one entry in his application for a patent.

Smelting Co. v. Kemp, 104 U. S. 636, p. 653.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657, p. 661.

The owner of several mining claims may procure separate patents, and may so change the end lines as to make them parallel; and if the several claims jointly include the entire apex, they can be so surveyed as to make all the end lines parallel to each other and give the applicant the right to a patent for the entire claim as a unit.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 600.

A patent issued subsequently to the act of 1870 may embrace claims consisting of more than 160 acres and include as many adjoining locations as the patentee has purchased.

Smelting Co. v. Kemp, 104 U. S. 636, overruling St. Louis Smelting Co. v. Kemp, 21 Fed. Cas. 205, and St. Louis Smelting Co. v. Ray, 21 Fed. Cas. 207.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 820.

Cook v. Klonos, 164 Fed. 529, p. 538.

15. PATENT FOR NONCONTIGUOUS TRACTS.

A patent may be issued for a lode claim consisting of two noncontiguous tracts where it is shown that the ore body extends uninterruptedly through the two tracts, and in such case the loss of the original point of discovery by reason of its inclusion in some other claim is immaterial as affecting the validity of the location.

Homestake Min. Co., In re, 29 L. D. 639, p. 691.

See Jack Pot Lode Min. Claim, In re, 34 L. D. 470.

16. PATENT FOR PLACER CLAIM—EFFECT, AND RIGHTS OF PATENTEE.

The issuance of a patent for a placer mining claim terminates the jurisdiction of the department over the land included, and such patent can be invalidated only by proceedings in the proper court.

Pike's Peak Lode, In re, 10 L. D. 200, p. 203.

The patentee of a placer mining claim is not called upon to support the title conferred by his patent simply because it is assailed by one who has found therein an obstacle to the obtaining of title to the same ground.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Land Co., 26 L. D. 622, p. 627.

The rights conferred by respective patents for placer and lode claims and the conditions upon which they are held are entirely different.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 680.

See Smelting Co. v. Kemp, 104 U. S. 636, p. 651.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

The patent of a placer mining claim carries with it the title to the surface included within the lines of the mining location as well as to the lands beneath the surface.

Deffeback v. Hawke, 115 U. S. 392, p. 406.

Largey, In re, 17 C. L. O. 3, p. 4.

Mason v. Washington-Butte Min. Co., 214 Fed. 32, p. 34.

Pike's Peak Lode, In re, 10 L. D. 200, p. 204.

17. PATENT FOR LODE WITHIN PLACER CLAIM.

The issuance of a patent on a placer claim does not prevent the department from issuing a patent for a lode claim within the boundaries of the placer patented claim.

Becker v. Sears, 1 L. D. 575.

War Dance v. Church Placer, 1 L. D. 549.

Robinson v. Roydor, 1 L. D. 564.

Moyer v. Mike & Starr Gold, etc., 10 C. L. O. 150.

Iron Silver Min. Co. v. Mike & Starr, Gold, etc., Min. Co., 6 L. D. 533.

Patent for a lode location may be issued, though such location is within the limits of a placer claim.

Shonbar Lode, In re, 1 L. D. 551.

An applicant for patent for a lode claim within the limits of a placer claim must show, in addition to the proof of the known existence of a lode at the time of the placer application, his possessory right and the value of work or improvement, as required by the mining laws.

Searl v. Finn, 10 C. L. O., 119, p. 120.

Before the Land Department can issue a second patent for a lode claim within a placer claim there must be some showing made that the lode was known to exist prior to the issuance of the placer patent.

Valley Lode, In re (on review), 22 L. D. 713.

18. PATENT ISSUES FOR SURFACE GROUND AND VEINS AND LODES.

The mining laws authorize the issuance of patents for lodes or veins together with so much surface ground on each side thereof as the local law sanctions.

Branagan v. Dulaney, 2 L. D. 744, p. 750.

No authority is given for the location of, or for the issue of patent to, any vein or lode of mineral independently of the land in which it is found.

Lellie Lode Min. Claim, In re, 31 L. D. 21, p. 23.

These sections primarily and unmistakably show that it was only veins or lodes upon which discoveries of mineral had been made prior to location that could be patented as a lode claim.

Wheeler v. Smith, 23 L. D. 395, p. 399.

This and the following section provide for obtaining patent to a vein or lode claim upon public mineral lands and describe what may be patented thereunder as a piece of land which has been claimed and located for mining purposes and the boundaries of which shall be distinctly marked on the ground.

Brick Pomeroy Mill Site, In re, 34 L. D. 320, p. 323.

This section provides for the issuing of patents for mining claims, and a patent when issued is for the land and conveys to the patentee the common law right to the full enjoyment of the surface as well as all beneath the surface, and also to pursue the vein within the location throughout its entire depth though passing into adjoining lands.

Hawke v. Deffeback, 4 Dak. 20, p. 27.

A locator applying for and receiving a patent for his claim secures the exclusive right to the surface ground described in the patent and all lodes having their outcrop in that domain which would by the terms of the act pass with the grant, and if the patent is obtained without fraud it is in the hands of the patentee or of his grantee full evidence of title as against all antecedent claims to the same property.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222, p. 224.

A patent for a mining claim conveys all veins, lodes, and ledges throughout their entire length, the top or apex of which lies within the surface boundaries though they may depart from a perpendicular and extend outside the vertical side lines.

Work Min., etc., Co. v. Doctor Jack Pot Min. Co., 194 Fed. 620, p. 628.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 604.

Crown Point Min. Co. v. Buck, 97 Fed. 462, p. 465.

A conveyance by patent of a vein or lode whose top or apex is within the lines of a mining claim, and whose apex is cut by the end lines of such claim, is as complete as the conveyance of the surface of the claim itself.

Blue Bird Min. Co., v. Largey, 49 Fed. 289, p. 292.

A title given by patent includes the surface ground embraced within the surface limits of the location and includes the veins and lodes, the tops or apices of which lie inside of such surface lines, in their course downward, though they depart from a perpendicular and extend outside the side lines.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 565.

19. EFFECT OF ISSUANCE AS A DETERMINATION OF QUESTIONS.

The issue of a patent to a claimant is equivalent to a determination by the United States, in an adversary proceeding to which an adverse claimant is in law a party, that the original claimant had title to the discovery superior to that of the adverse claimant and that the latter's location is invalid.

Gwillim v. Donnellan, 115 U. S. 45, p. 51.

Perego v. Erwin, 85 Fed. 904, p. 905.

The issuance of a patent for a mining claim is a judicial determination of the rights of the patentee.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 819.

A patent to a mining claim duly executed operates not only to pass the title but is in the nature of an official declaration on the part of the Land Office that all the requirements preliminary to its issue have been complied with and the presumptions attending it are not open to rebuttal in an action at law, and its chief value is in its unassailable character and is the means of quieting the possessor in the enjoyment of his claim.

Smelting Co. v. Kemp, 104 U. S. 636, p. 640.

Argonaut Consol. Min., etc., Co. v. Turner, 23 Colo. 400, p. 405.

Steel v. Smelting Co. 106 U. S. 447.

Duggan v. Davey, 4 Dak. 110, p. 124.

Hawke v. Deffebach, 4 Dak. 20, p. 25.

Poire v. Wells, 6 Colo. 406, p. 408.

Sharkey v. Candiani, 48 Oreg. 112, p. 119.

Talbott v. King, 6 Mont. 76, p. 110.

Mayer v. Carothers, 14 Mont. 274, p. 289.

See Calhoun Gold Min. Co. v. Ajax, etc., Co., 182 U. S. 499.

Uinta Tunnel, etc., Co. v. Creed Cripple Creek, etc., Min., etc., Co., 119 Fed. 164.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579.

Anderson v. Bartels, 7 Colo. 256.

Iron Silver Min. Co. v. Campbell, 17 Colo. 267.

Sparks v. Pierce, 115 U. S. 408, p. 412.

Murray v. Buol, 6 Mont. 397, p. 409.

The patent to a mining claim carries with it such rights only to the land which includes the claim as the law confers and these rights can neither be enlarged nor diminished by the arbitrary action of the officers of the Land Department.

Davis v. Weibbold, 139 U. S. 507, p. 528.

Deffeback v. Hawke, 115 U. S. 392, p. 406.

Northern Pac. R. Co., In re, 32 L. D. 342, p. 346.

A patent adds little to the security of a party in the continuous possession of a mine he has located or purchased if he has complied with the statutory requirements.

Chambers v. Harrington, 111 U. S. 350, p. 351.

A patent for a mining claim is the effective instrument whereby title passes from the Government and is the muniment upon which all parties claiming thereunder may confidently rely, and accordingly the description should be as accurate as is reasonably possible.

Sulphur Springs Quicksilver Mine, In re, 22 L. D. 715.

20. EFFECT AS GRANT OF SUBSURFACE.

A patent to a mining claim conveys the subsurface as well as the surface and the only limitation on the exclusive title thus conveyed is the right given to another locator to pursue a vein apexing in his claim which on its dip enters such subsurface.

St. Louis Min., etc., Co. v. Montana Min. Co., 194 U. S. 235, p. 237.

Prima facie a patent conveys the right to everything found within the vertical planes drawn through the surface boundaries, with the exception that such boundaries may be invaded by an outside lode locator holding the apex of a vein in the pursuit of such vein on its downward course underneath the patented surface.

St. Louis Min., etc., Co. v. Montana Min. Co., 194 U. S. 235, p. 238.

A patent to mineral lands differs from a patent for agricultural lands in that it does not give title to the ground vertically to the center of the earth.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 564.

21. FORCE AND EXTENT AS A CONVEYANCE.

A patent is the perfection and consummation of the title conveyed by the previous locations.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378.

Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 450.

A patent to a mining claim is a quitclaim deed from the United States and when properly recorded is notice to the world of all it contains.

McCarthy, In re, 14 L. D. 105, p. 108.

A patent granted by the United States for land either agricultural or mineral is something upon which its holder can rely for peace and security in his possession, and in its potency it is ironclad as against all mere speculative interferences.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Casey v. Thieviege, 19 Mont. 341, p. 353.

Brownfield v. Bier, 15 Mont. 403, p. 413.

Talbott v. King, 6 Mont. 76, p. 107.

See *South End Min. Co. v. Tinney*, 22 Nev. 19, p. 62.

A patent issued for a mining claim is prima facie evidence that there has been a discovery of mineral and that the lands were properly located as mineral lands, and that all the steps required by law have been regularly taken.

Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 259.

See *Eureka Consol. Min. Co. v. Richmond Min. Co.*, 8 Fed. Cas. 819.

There is a difference between a grant of coal or minerals in place and the grant of the right to extract or appropriate to one's own use such articles.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 551.

When a patent for a mining location is issued it covers everything embraced in the lands to which no prior rights have attached.

Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348.

22. AS A GRANT OF EXTRALATERAL RIGHTS.

A patent may properly grant all extralateral rights.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 50.

A patent for the claim located conveys the legal title to the surface and this carries with it the right to follow the vein though it pass outside of the vertical side lines of the location.

Gwillim v. Donnellan, 115 U. S. 45, pp. 47, 48.

A vein having its apex within the side lines of the ground included in a patent passes with the patent.

Griffin, In re, 2 L. D. 736.

Patten Extension Lode, In re, 15 L. D. 133, p. 134.

A patent under this section or under the act of 1866 limits the patentee to veins or lodes lying within planes drawn vertically downward through the end lines of his location, and gives the patentees the right to take the ores found within those planes to any depth of any lodes the tops or apices of which lie within the surface lines of his location.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

The provisions of this and other sections tend to indicate that a patent for a mining claim when issued is a grant of land with all the rights incident to common-law owners and the reasons for specifying in the description of the grant the veins, lodes, and ledges is for the purpose of defining what is granted in addition to the land, that is the right to pursue such veins, lodes, and ledges extralaterally in case they depart from the perpendicular and extend beyond the side lines of the claim.

St. Louis Min., etc., Co. v. Montana Min. Co., 113 Fed. 900, p. 902.

This statute secures to the patentee not only the surface ground including all veins and lodes having their apices therein, but gives to him also the extralateral right to follow such lode or vein downward though it passes outside of his side lines.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 664.

It must be assumed in the absence of a record or some satisfactory evidence that a patent was issued without any contest and upon the surveys made under the proper officer of the Government and included only ground in respect to which there was no conflict, and there is no presumption in such case that any subterranean rights were presented and adjudicated.

Lawson v. United States Min. Co., 207 U. S. 1, p. 17.

See *Keely v. Ophir Hill Consol. Min. Co.*, 169 Fed. 601, p. 604.

The issuance of a patent to a mining claim, whether adverse or not, is not in any sense a determination of a controversy over extralateral underground rights in following any surface conflict, as such rights could not have been made the subject of an issue or decision in the course of the patent proceedings.

United States Min. Co. v. Lawson, 134 Fed. 769, p. 776.

Montana Min. Co. v. St. Louis Min., etc., Co., 102 Fed. 430.

The patentee of a number of consolidated mining locations is not required to show that separate lines of any of the original locations embraced within the surface boundaries of such consolidated patented claim entitle him to extralateral rights in respect to any lode or vein the apex of which is found within the exterior boundaries.

Carson City Gold, etc., *Min. Co. v. North Star Min. Co.*, 83 Fed. 658, p. 663.

23. PRESUMPTIONS AS TO REGULARITY AND VALIDITY OF PRECEDENT STEPS.

The presumption is that all antecedent steps necessary to the issuance of a patent for a mining claim were duly taken, and the holder can rely thereon for peace and security in his possession.

Carson City Gold, etc., *Min. Co. v. North Star Min. Co.*, 83 Fed. 658, p. 664.

Iron Silver Min. Co. v. Campbell, 17 Colo. 267.

See *Chambers v. Jones*, 17 Mont. 156.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657, p. 662.

The presumption attending a patent when assailed is that it was issued upon sufficient evidence and that the law had been complied with, and such presumptions can only be overcome by clear and convincing proof.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 676; 9 Sup. Ct. 195.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 813.

United States v. King, 83 Fed. 188, p. 191.

See *Deffeback v. Hawke*, 115 U. S. 392.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

United States v. Marshall Silver Min. Co., 129 U. S. 579, p. 588.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394.

United States v. Central Pac. R. Co., 93 Fed. 871, p. 873.

Alford v. Barnum, 45 Cal. 482.

Patents for mining claims issued by the Government after surveys of the land and examinations of the relative rights of the Government and the patentees are buttressed by such a presumption of exactness that they can not be overcome or set aside on the ground of mistake by a mere preponderance of evidence but only by evidence so clear, unequivocal, and convincing that it does not leave the issue in doubt.

Thallman v. Thomas, 111 Fed. 277, p. 283.

If upon any theory of facts as developed in a contest over the rights to a patented mining location or mineral vein the patent may be sustained, it is the duty of a court to indulge the presumption that the facts existed and were properly brought to the attention of the officers of the Land Department before the patent was issued, and all intendments are in favor of the validity of such a patent.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 819.

A patentee of a mining claim can not be compelled by an intruder to establish the validity of the action of the Land Department and the correctness of its ruling, as the presumptions attending it are not open to rebuttal and its unassailable character is what gives it value as a means of quieting the possession and enjoyment of the claim embraced.

Smelting Co. v. Kemp, 104 U. S. 636, p. 641.

See *Steel v. Smelting Co.*, 106 U. S. 447, p. 455.

Moore v. Wilkinson, 13 Cal. 478.

Where a patent has been issued to a relocater the presumption is that the proceedings in the Land Office prior to the issuance of the patent were regular and that the evidence was sufficient to show an abandonment and to authorize the granting of the patent.

Harkrader v. Carroll, 76 Fed. 474, p. 476.

24. AS EVIDENCE OF ACTS AND RIGHTS.

The acceptance by the Government of location proceedings had before the mining act of 1866, and the issuance of a patent thereon is evidence that such location proceedings were in accordance with the rules and customs of the local mining district.

Lawson v. United States Min. Co., 207 U. S. 1, p. 19.

The boundary lines of a mining claim as defined by the patent are the only lines by which the rights of parties to such claim can be determined.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 600.

25. EFFECT ON DATE OF LOCATION OR PROCEEDINGS.

The conclusiveness of a patent does not prevent the patentee from showing the date of the original proceedings for the acquisition of the title, where it is not stated in the instrument, as the patent takes effect by relation as of that date, for the purpose of cutting intervening claims.

Smelting Co. v. Kemp, 104 U. S. 636, p. 647.

The title of a patentee dates from the date of the entry and payment and not from the date of the patent, and a condition in such patent making it subject to the right of a proprietor of a vein or lode relates to that date and antedates the subsequent location of any mining claim, and the patentee has the legal title to any vein or lode within such land as well as to the land itself.

Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348, p. 349.

Where a patent for a mining claim is silent as to the date of the location, such fact may be shown by any competent evidence in the same manner as any other question not settled by the patent itself.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 565.

See *Champion Min. Co. v. Consolidated, etc., Min. Co.*, 75 Cal. 78.

Kahn v. Old Telegraph Min. Co., 2 Utah 174, p. 188.

26. PATENT OPERATES BY RELATION.

A patent for a mining claim takes effect by relation to the date of the entry, and that is the earliest evidence of any movement for the acquisition of title from the Government.

Davis v. Weibbold, 139 U. S. 507, p. 517.

A patent for a mining claim relates back to the time of the original location and entry and perfects the right of the claimant to the exclusion of adverse intervening claims.

Heydenfeldt v. Daney, etc., Min. Co., 93 U. S. 634, p. 641.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Harrison, In re, 2 L. D. 767, p. 770.

Deno v. Griffin, 20 Nev. 249, p. 252.

See *American Hill Quartz Mine, In re*, 6 C. L. O. 2.

Talbott v. King, 6 Mont. 76, p. 107.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 46.

A right to a patent to mineral lands or a mining claim once vested is treated by the Government as equivalent to a patent issued and when the patent issues it relates back to the inception of the right thus acquired.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 11.

Deffebach v. Hawke, 115 U. S. 392, p. 405.

Davis v. Weibbold, 139 U. S. 507.

Deno v. Griffin, 20 Nev. 249, p. 252.

See *Talbott v. King*, 6 Mont. 76.
Courchaine v. Bullion Min. Co., 4 Nev. 369, p. 375.
South End Min. Co. v. Tinney, 22 Nev. 19, p. 46.

A patent is proof of the discovery and relates back to the date of the location and is conclusive on this point.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 510.
Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 353.
Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 565.
Uinta Tunnel Min., etc., Co. v. Creede & Cripple Creek Min., etc., Co., 119 Fed. 164, p. 170.

A patent for a mining claim relates to the date of entry and the entry and patent are regarded as one title, and the title of the claimant dates from the date of the entry and payment, and not from the date of the patent.

Miner, In re, 9 L. D. 408, p. 412.
 See *Pacific Coast Min., etc., Co. v. Spargo (Fick)*, 16 Fed. 348.

27. RESERVATIONS IN PATENT—LIMITATION AND EFFECT.

Land officers have no authority to insert in a patent any other terms than those of conveyance with recitals showing compliance with all statutory conditions.

Deffeback v. Hawke, 115 U. S. 392, p. 406.
Pike's Peak Lode, In re, 10 L. D. 200, p. 204.

This section does not authorize any exception as to the exclusion of lands in a patent, but if an exception is made, and it is no broader than the statute in its signification, it adds nothing to and takes nothing from the effect of the statute, and if it is broader than the statute, then it is wholly unauthorized by law and as to such excess, at least, is utterly void.

Cowell v. Lammers, 21 Fed. 200, p. 207.

A patent for a lode claim may contain a reservation and exception of whatever title may have been conveyed by an existing agricultural patent.

De Witt, In re, 9 C. L. O. 34, p. 35.

A patent issued for a mining claim should contain no reservation as to town-site rights though the town-site authorities had asserted prior occupation and settlement.

Simmons, In re, 7 L. D. 283, p. 285.

There is no legal authority for inserting in a mineral patent a clause reserving the right of a town site.

Antediluvian Lode & Mill Site, In re, 8 L. D. 602, p. 604.

It is the custom of the department to insert in a patent for a mining location a reservation excepting or reserving all town-site rights, but if the reservation is broader than the statute warrants, it is a nullity as to any excess over the statutory restriction, and any reservation not authorized by law is a nullity.

Rico Townsite, In re, 9 C. L. O. 90, p. 91.

Patents may contain a reservation to the effect that the premises granted with the exception of the surface may be entered by the proprietor of any vein or lode, the apex of which lies outside of the boundaries of the granted premises if it extends into the premises granted.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 50.

If a patent excepts certain described ground the patentee gets no title to a vein having its apex in such excluded ground.

Montana Ore Purchasing Co. v. Boston & Montana, etc., Min. Co., 20 Mont. 336, p. 342.

See Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868.

28. CONCLUSIVENESS.

Courts will not go behind the decisions of the Land Office as to the matter of grant and patent to a mining claim.

Horsky v. Moran, 21 Mont. 345, p. 352.

A patent is evidence that all previous steps have been regularly taken and justify its making.

Smelting Co. v. Kemp, 104 U. S. 636, p. 646.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 29.

When a person has obtained his patent he can only be required to answer persons who have some established claim and to contest with such person, not before the administrative departments, but in courts of justice only, and by legal proceedings, which determine finally the rights of the parties to property.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 301.

Turner v. Sawyer, 150 U. S. 578, p. 587.

The question of the mineral or nonmineral character of lands is open to consideration up to the time of issuing the patent, but when the legal title passes by patent it passes free from the contingency of future discovery of mineral.

Shaw v. Kellogg, 170 U. S. 312, p. 339.

See Barden v. Northern Pac. R. Co., 154 U. S. 288.

Roberts v. Southern Pac. R. Co., 186 Fed. 934, p. 945.

A patent is conclusive as to all matters determinable by the Land Department when its action is within the scope of its authority and when it has jurisdiction under the law to convey the land.

Smelting Co. v. Kemp, 104 U. S. 636, p. 646.

Steel v. Smelting Co., 106 U. S. 447.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 584.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 317.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 685.

Davis v. Weibbold, 139 U. S. 507, p. 529.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 328.

Creede & Cripple Creek, Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 345.

Waterloo Min. Co. v. Doe, 56 Fed. 685, p. 687.

Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 565.

Montana Central R. Co. v. Migeon, 68 Fed. 811.

Carson City, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 664.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. 657, p. 660.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 820.

Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579, p. 586.

Roberts v. Southern Pac. R. Co., 186 Fed. 934, p. 945.

Smoke House Lode, In re, 4 L. D. 555, p. 556.

Mountain Maid, In re, 5 L. D. 28.

Spong, In re, 5 L. D. 193, p. 194.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 29.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 425.

Talbot v. King, 6 Mont. 76, p. 104.

Chambers v. Jones, 17 Mont. 156, p. 162.

Board of Education v. Mansfield, 17 S. Dak. 72, p. 82.

See Poire v. Wells, 6 Colo. 406.

Justice Min. Co. v. Lee, 21 Colo. 260.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 58.

A patent for a mining claim is conclusive as to the date of the location and such date is an essential fact to be determined by the Land Office in issuing a patent, and the rule applies both in the determination by the Land Office and the determination of the fact by a judgment of a court of competent jurisdiction in an action by an adverse claimant.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 690.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 546.

Overruling Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, and *Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co.*, 108 Fed. 189, p. 193.

See *United States v. Northern Pac. R. Co.*, 95 Fed. 864.

Third persons are concluded by the Government's patent to a locator, on the fact of the entry and that prior to the entry there had been a discovery and a valid location.

Creede & Cripple Creek, etc., Min. Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 354.

When a locator has received a patent for a mining claim his rights must be determined by the terms of the patent and the objection that the end lines were not parallel can not be made after the patent is granted.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 49.

A patent conveys the paramount title to a mining claim to the applicant and under the statute is presumptive proof that the applicant was the owner of the mining claim thereby conveyed, and is conclusive except for fraud, or a mistake on the part of the officers of the Land Department.

Black v. Elkhorn Min. Co., 49 Fed. 549, p. 553.

When a patent to a mining claim issues the title passes from the Government and no person can question such title who has not prior thereto by compliance with the conditions prescribed by the statute, himself acquired an interest in such claim, as strangers can not be heard to intervene as between the Government and its grantees.

Wight v. Dubois, 21 Fed. 693.

See *Boggs v. Merced Min. Co.*, 14 Cal. 279.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 54.

As a general rule a person who has obtained a patent from the Government for a mining claim can not be called upon to answer touching the validity or invalidity of his patent before the officers of the Land Department.

United States v. Schurz, 102 U. S. 378.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 301.

The issuance of a patent to the original locator is a bar to the right of a subsequent locator to apply to the United States for a patent and defeats his location.

Gwillim v. Donnellan, 115 U. S. 45, p. 51.

The patentee of a mining claim can not be deprived of all benefits arising from his patent, including those which attach to the original location while unpatented.

Carson City Gold, etc., Min. Co., v. North Star Min. Co., 73 Fed. 597, p. 600.

29. QUESTIONS NOT CONCLUDED BY PATENT.

The conclusions of a patent does not prevent a party resisting it from showing that no entry of the land was made as an initiatory proceeding, where such fact is not stated in the instrument.

Smelting Co. v. Kemp, 104 U. S. 636, p. 647.

The fact that a patent to one mining claim excepts certain surface ground is not conclusive on the question of the priority of location, and the owner of such excepted ground is not precluded from contesting the claim.

Van Zandt v. Argentine Min. Co., 8 Fed. 725, p. 728.

A patent is not conclusive on the question of the existence of a vein or lode to the extent of giving the grantee the right to follow the alleged vein or lode downward on its dip outside of the lines of his location.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 552.

The rule that of two adverse mining locations made that which is prior in time is prior in right does not apply where a junior locator makes an application for a patent and on due notice the senior locator either fails to appear and adverse the claim, or having appeared the claim is decided against him and after a patent is issued the patentee has the older as well as the better title.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222, p. 224.

A patent for a mining claim issued on a regular application after due notice and where no adverse claim has been filed is conclusive against third persons as to those things with respect to which adverse claims could be filed, but it does not settle the question as to the right of a vein below the point of junction where two separate surface veins unite.

Champion Min. Co. v. Consolidated Wyoming Gold Min. Co., 75 Cal. 78, p. 80.

30. NOT SUBJECT TO COLLATERAL ATTACK.

A patent for a mining claim is not subject to collateral attack and no relief is afforded in a court of law, though the government officers took mistaken views of the law or drew erroneous conclusions from the evidence or acted from imperfect views of their duty, or even from corrupt motives.

Smelting Co. v. Kemp, 104 U. S. 636, p. 647.

Steel v. Smelting Co., 106 U. S. 447.

Davis & Weibbold, 139 U. S. 507, p. 529.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 353.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 604.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 820.

Spong, In re, 5 L. D. 193.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 328.

Justice Min. Co. v. Lee, 21 Colo. 260, p. 262.

Mantle v. Noyes, 5 Mont. 274, p. 294.

See Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 260.

Durango Land & Coal Co. v. Evans, 79 Fed. 425.

A United States patent, regular upon its face and upon the record, issued in the forms prescribed by law is unassailable collaterally or even with success directly by parties having the proper status except upon clear and indisputable grounds and evidence.

Cowell v. Lammers, 21 Fed. 200, p. 208.

A patent can not be collaterally attacked on account of any question which the Land Department can lawfully determine before issuing the patent.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 600.

The validity of a patent for a mining claim can not be assailed collaterally because false and perjured testimony may have been used to secure it.

Steel v. Smelting Co., 106 U. S. 447, p. 453.

See Justice Min. Co. v. Lee, 21 Colo. 260, p. 262.

Casey v. Thieviege, 19 Mont. 341, p. 353.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 55.

The fact that a patented placer claim included part of a lode claim which had not been forfeited can not be considered in a collateral attack upon such placer patent.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 818.

No person can become the proprietor of a mine already granted or of a mine in lands a patent for which has been issued, except by purchase from the grantee; and such a patent can not be attacked collaterally on the ground that the land contained valuable minerals.

Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348, p. 349.

It is not a collateral attack upon a patent to a lode mining claim for a claimant to a tunnel site which crosses such lode claim and which was located before the entry of such lode claim, to assert his rights to his tunnel claim as against the patentee of the lode claim, as under the law such a patent issues subject to such right.

Uinta Tunnel Min., etc., Co. v. Creede & Cripple Creek Min., etc., Co., 119 Fed. 164, p. 169.

31. VOID PATENT.

If a patent is issued for land reserved by statute from sale, or otherwise appropriated, or if it is for an authorized amount or if it is not executed by proper officers, it is void.

Smelting Co. v. Kemp, 104 U. S. 636, p. 644.

Chicago Quartz Min. Co. v. Oliver, 75 Cal. 194, p. 197.

See Burfenning v. Chicago, etc., R. Co., 163 U. S. 321, p. 323.

A patent issued for a lode or vein claim at a time when a contest is pending between claimants in a State court in reference to the identical vein is void.

Richmond Min. Co. v. Rose, 114 U. S. 576.

Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 258.

Rose v. Richmond Min. Co., 17 Nev. 25.

A patent attempting to survey a vein or lode on its strike outside and independently of the granted surface is void.

Lellie Lode Min. Claim, In re, 31 L. D. 21, p. 24.

See Montana Ore-Purchasing Co. v. Boston & Montana Consol., etc., Min. Co., 20 Mont. 336.

A patent may be collaterally impeached in any action and its operation as a conveyance defeated by showing that the department had no jurisdiction to dispose of the land described or that the public officers acted without authority; as examples, where the land was never the property of the United States, or where its sale was not authorized by statute, or where it had previously been disposed of or reserved from sale, or dedicated to special purposes, or that the instrument was never executed by the person whose signature was attached to it.

Steel v. Smelting Co., 106 U. S. 447, p. 452.

Smelting Co. v. Kemp, 104 U. S. 636, p. 646.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 583.

Chilberg v. Consolidated Min. Co., 3 Alaska 235, p. 241.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 328.

Van Ness v. Rooney, 160 Cal. 131, p. 141.

Heydenfeldt v. Daney, etc., Min. Co., 10 Nev. 290, p. 308.

See Richmond Min. Co. v. Rose, 114 U. S. 576.

Lakin v. Dolly, 53 Fed. 333.

A patent issued for a greater area of mining ground than is permitted by the statute is void only as to such excess.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 106 Fed. 241.

See Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 821.

To make a patent void on its face there must be something more than an apparent contradiction in its terms.

Smelting Co. v. Kemp, 104 U. S. 636, p. 644.

A patent may be seen to be invalid either when read in the light of the law or by reason of what the court must take judicial notice of.

Smelting Co. v. Kemp, 104 U. S. 636, p. 644.

A patent for a mining claim is void if the Government officers act without authority of law, or if the lands conveyed were never within their control, or if they had been withdrawn from their control before the patent issued.

- Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 258.
 See Smelting Co. v. Kemp, 104 U. S. 636.
 Steel v. Smelting Co., 106 U. S. 447.
 Reynolds v. Iron Silver Min. Co., 116 U. S. 687.
 Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 328.
 Board of Education v. Mansfield, 17 S. Dak. 72, p. 81.

32. VOID PATENT IMPEACHED COLLATERALLY.

If a patent is void upon its face, or if it was issued without authority, or if it was prohibited by statute, it may be impeached collaterally in an action at law.

- Patterson v. Winn, 24 U. S. (11 Wheat.) 380.
 Smelting Co. v. Kemp, 104 U. S. 636, p. 644.
 Steel v. Smelting Co., 106 U. S. 447.
 Garrard v. Silver Peak Mines, 94 Fed. 983, p. 990.
 Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 820.
 Chilberg v. Consolidated Min. Co., 3 Alaska 235, p. 241.
 See Doolan v. Carr, 125 U. S. 618.
 Knight v. United States Land Association, etc., 142 U. S. 161.
 Burfenning v. Chicago, etc., R. Co., 163 U. S. 321, p. 323.
 Lakin v. Dolly, 53 Fed. 333.
 Heydenfeldt v. Daney, etc., Min. Co. 10 Nev. 290, p. 308.

A patent issued for a mining claim where the title has already passed out of the United States is utterly void, and is subject to collateral attack.

- Davis v. Weibbold, 139 U. S. 507, p. 525.
 Francoeur v. Newhouse, 40 Fed. 618.
 Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 606.

33. STRANGERS MAY NOT ATTACK PATENT.

A stranger can not complain of the act of the Government in issuing a patent to a mining claim.

- Smelting Co. v. Kemp, 104 U. S. 636, p. 647.
 Horsky v. Moran, 21 Mont. 345, p. 352.

A person who was not in privity with the United States and who has acquired no right to the land, or vein or lode, when a patent was issued to another, will not be permitted to attack such a patent.

- New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 602.
 Board of Education v. Mansfield, 17 S. Dak. 72, p. 78.

A person who has gone through all the processes which the statutes of the United States require and has obtained title can not be subjected by the officers of the Government to defend that title before them from the attacks of a stranger.

- Iron Silver Min. Co. v. Campbell, 135 U. S. 292, p. 301.

A person after obtaining patent should be required only to answer persons who have some established claim, and to contest with another not before the administrative departments but in courts of justice, by the regular proceedings which determine finally the rights of parties to property.

- Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 301.
 Lightner Min. Co. v. Superior Court, etc., 14 Cal. App. 642, p. 648.

34. CORRECTING MISTAKE IN PATENT—RECONVEYANCE AND REISSUE.

Where a title to a mining claim has been erroneously given, the parties may reconvey to the United States for the purpose of correcting the error without resorting to

the courts and the title received by the Government in this way is as good as when reconveyed in a court.

Juniata Lode, In re, 13 L. D. 715, p. 717.
See Winter Lode, In re, 22 L. D. 362.

Where lands have been incorrectly described in a patent for a mining claim, the Land Department will, on a reconveyance to the United States, execute a new and corrected patent, correcting the mistake.

Baldwin Star Coal Co. v. Quinn, 28 L. D. 307.
Owers v. Killoran, 29 L. D. 160, p. 162.

A new patent for a mining claim can not issue without a proper application under a corrected survey and unless the patentee surrenders the invalid patent and reconveys to the United States the land incorrectly described therein, and a suit to vacate the patent should be recommended to the Department of Justice.

United States v. Rumsey, 22 L. D. 101, p. 102.

Where the United States can successfully maintain a suit to vacate a patent for a mining claim or for a homestead entry on mineral lands, the Land Department may accept a reconveyance of the ground for which patent was wrongfully obtained and may then issue a patent to the mineral claimant.

San Francisco Min. Co., In re, 29 L. D. 397, p. 398.

Where parties acting in good faith reconvey for the purpose of enabling the United States to convey ground by mineral patent which had been previously included in a homestead patent as the result of a mistake, the deed should be accepted for such purpose and patent issued to the mineral claimant in accordance with his entry.

Tryon, In re, 29 L. D. 475, p. 477.

The rule that the department may accept a reconveyance of patented placer ground for the purpose of passing title to the owner of a known lode therein can not be applied to two lode claims where the latter applicant had due notice of all the proceedings to secure patent and took no steps to protect his rights, as it can not be said in such case that it was through any accident, fraud, or mistake that the ground in controversy was patented to the first applicant.

Winter Lode, In re, 22 L. D. 362, p. 365.
See Juniata Lode, In re, 13 L. D. 715.
South Star Lode, In re, 20 L. D. 204.

Where a patent has been duly issued for a placer claim according to the survey and description furnished by the applicant, there is no method by which such patent can be corrected under such circumstances as to include land not applied for or surveyed.

Eureka & Excelsior Consol. Gold. Min. Co., In re, 24 L. D. 512, p. 513.

The Land Department is without jurisdiction or authority to correct any mistake in a patent issued for a mining claim, so long as the patent remains outstanding.

Monofraction Lode Min. Claim, In re, 31 L. D. 121.

35. CANCELLATION AND VACATION.

a. GENERAL PROVISIONS AND GROUNDS.

A patent for a mining claim can only be vacated or limited by regular judicial proceedings taken in the name of the Government for that special purpose.

Steel v. Smelting Co., 106 U. S. 447, p. 454.
Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 821.
Jameson v. James, 155 Cal. 275, p. 280.
Quinn v. Baldwin Star Coal Co., 19 Colo. App. 497, p. 505.
See Justice Min. Co. v. Lee, 21 Colo. 260.

When the Government has issued and delivered its patents for lands the control of the department over the title to such land has ceased, and the title of the patentee can only be impeached by a bill in chancery.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 301.

See Chandler v. Calumet & Hecla Min. Co., 149 U. S. 79, p. 93.

Horsky v. Moran, 21 Mont. 345, p. 356.

A patent for a mining claim though irregularly issued is not void, and until vacated and set aside by appropriate judicial proceedings is of full force and effect.

Sinnott v. Jewett, 33 L. D. 91, p. 99.

See Smelting Co. v. Kemp, 104 U. S. 636, p. 644.

Permission to bring a suit in the name of the United States to vacate placer mineral patents will not be granted where full opportunity has been given for adverse interests to be heard.

Starr, In re, 2 L. D. 759.

If title to mineral lands has been acquired contrary to the term of the statute, such fact can be shown and the patent annulled in a proper proceeding.

South End Min. Co., v. Tinney, 22 Nev. 19, p. 38.

The proof necessary to justify the vacation of a patent for a mining claim must be clear, convincing, and unambiguous.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 316.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 813.

In an action in a court of equity for relief as against a patent for a mining claim the complainant must connect himself with the original source of title so as to be able to aver that his rights are injuriously affected by the existence of such patent and he must possess such equities as will control the legal title in the patentee.

Smelting Co. v. Kemp, 104 U. S. 636, p. 647.

Boggs v. Merced Min. Co. 14 Cal. 279, p. 363.

Where a patent to a mining claim has been improperly issued after a determination by a proper court that neither party is entitled to the possession of the claim, the patentee may be called upon to surrender title and upon refusal suit may be instituted for the cancellation of such patent.

Brien v. Moffit, 35 L. D. 32, p. 35.

See Newman v. Barnes, 23 L. D. 257.

Where a patent for a mining claim has not issued in conformity with the judgment of the department awarding the right of entry and its acceptance has been refused by the grantee, the department has the power to recall the patent with the consent of the grantee, and issue one in conformity to the judgment, or to institute proceedings to determine the relative rights of the parties.

Simmons, In re, 7 L. D. 283, p. 286.

Harry Livingston Lode, In re, 7 L. D. 319.

Generally objections and defects to a patent must be put in issue by pleading in a direct proceeding to avoid the patent.

Patterson v. Winn, 24 U. S. 380.

Smelting Co. v. Kemp, 104 U. S. 636, p. 644.

Patents for mining claims being the accredited evidences of rights and title are not to be set aside or modified for mistakes unless such alleged mistakes are proved by evidence that is plain and convincing beyond reasonable controversy.

Thallman v. Thomas, 111 Fed. 277, p. 282.

A patent to a mining claim can not be vacated or limited by the Government officers themselves as their power over the land is ended when the patent is issued and placed on the records of the department.

Steel v. Smelting Co., 106 U. S. 447, p. 454.

The Government can not avoid its patent on the ground that there was no mineral discovered in the discovery shaft, if mineral was in fact discovered within the location, though a State law may require a discovery in the discovered shaft.

Wight v. Dubois, 21 Fed. 693, p. 694.

Where each of two parties has a patent for the same claim, the question as to the superiority of title may depend upon extrinsic facts not shown by the patents themselves; and it is competent in a controversy in a judicial proceeding to establish such priority by proof of such facts.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286.

See Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. 557, p. 567.

A suit may be instituted to declare a town-site patent inoperative as to a portion of the land proved to have been known to be valuable for mineral at the time of the entry and issuance of patent.

Laney, In re, 9 L. D. 83, p. 84.

Largey, In re, 17 C. L. O. 3.

An order refusing to grant a patent does not of itself restore the land to the public domain.

Brown v. Gurney, 201 U. S. 184, p. 194.

The cancellation of a mineral patent does not of itself render the ground embraced by it subject to relocation, but the effect is nothing more than a rejection of the application for patent and the applicant has the same rights as if no application had been made.

McKnight v. El Paso Brick Co., 16 N. Mex. 721, p. 737.

See Beals v. Cone, 27 Colo. 473.

The Land Department may cancel an application on the ground that the applicant has not complied with the mining laws.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 49.

Sweeney v. Wilson, 10 L. D. 157.

See Robbins, In re, 42 L. D. 481.

A patent for mineral land may be annulled if the holder has failed to comply with the terms of this section in the matter of expenditures.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 39.

b. CANCELLATION FOR FRAUD.

A patent for a mining claim passes the legal title, though procured by fraud, but it may be assailed by a proceeding in equity and set aside on proof of the fraud, if rights of innocent purchasers have not intervened.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 313.

Where a patent to a mining claim was procured by fraud and misrepresentation and against the rights of an adverse claimant a court of equity may at the instance of the Government cancel the patent and afford the adverse claimant an opportunity to contest his rights.

Brien v. Moffitt, 35 L. D. 32, p. 43.

Diamond Coal, etc., Co. v. United States, 233 U. S. 236, p. 239.

See McLaughlin v. United States, 107 U. S. 526, p. 528.

United States v. Minor, 114 U. S. 233, pp. 240-244.

Mullan v. United States, 118 U. S. 271, pp. 278-279.

United States v. San Jacinto Tin Co., 125 U. S. 273, pp. 285, 286.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 676.

Overgaard v. Westerberg, 3 Alaska 168, p. 174.

Cascaden v. Bortolis, 3 Alaska 200, p. 206.

A patent can be assailed by a proceeding in equity and set aside as void on the ground of fraud in its procurement where there are no innocent holders for value.

United States v. Minor, 114 U. S. 233, p. 243.

Meador v. Norton, 78 U. S. 442, p. 458.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 313.
 Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 813.

The United States may have a patent for a mining claim annulled in a court of equity on the ground of fraud in procuring a patent as nonmineral, when it was in fact known to the applicant to be mineral land and was at the time of the entry worked as such.

United States v. Rose, 24 Fed. 196.
 Diamond Coal, etc., Co. v. United States, 233 U. S. 236, p. 239.
 See United States v. San Jacinto Tin Co., 23 Fed. 279.
 United States v. Minor, 114 U. S. 233.

To cancel a patent for fraud the Government must allege and prove fraud by clear evidence.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 135.

A patent for a mining claim may be set aside on the ground of fraud or in cases where it appears on the face of the patent that its issuance was not authorized by law.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 665.

A court will not set aside a patent to mineral land on the ground of fraud merely because the applicant was mistaken as to the character of the land, and where witnesses disagree on the question as to whether the land was in fact mineral land, it must clearly appear that the representations were false and fraudulent in fact before the court will act in such a case.

United States v. Iron Silver Min. Co., 24 Fed. 568, p. 570.
 See United States v. Kostelak, 207 Fed. 447, p. 450.

Where an applicant for a patent for mineral lands and the protestant have alleged and proved that such lands are in fact mineral and more valuable for mineral than agricultural purposes, though returned as agricultural by the surveyor general, the protestant can not afterwards be heard to deny the mineral character of the land in order to prevent a patent from being issued to the applicant.

Dobbs Placer Mine, In re, 1 L. D. 565, p. 568.

It is a fraud on the Government when a claimant obtains a patent on representations that the land described is valuable for its mineral deposits and that the purpose of obtaining the patent is because of such mineral deposits, when in fact the land is not valuable for such deposits and is in fact not desired by the patentee for that purpose, but for other and different purposes.

United States v. Lavenson, 206 Fed. 755, p. 763.

36. PATENT UNDER HOMESTEAD LAW NOT DEFEATED.

Nothing short of known mines on the land capable of being worked at a profit will prevent a patent under the homestead law.

United States v. Reed, 28 Fed. 482.
 United States v. Central Pac. R. Co., 93 Fed. 871, p. 874.

All mineral deposits discovered upon lands after a patent has issued therefor to a party claiming under the laws regulating the disposition of agricultural lands pass with the patent, and the Land Office has no further jurisdiction in such case.

Cowell v. Lammers, 21 Fed. 200, p. 202.

A mineral discovery subsequent to grant of title by the United States does not affect the title or give the discoverer or locator any right.

Riley, In re, 33 L. D. 68, p. 70.
 Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.
 Shaw v. Kellogg, 170 U. S. 312, p. 332.

If there were not upon the premises at the time the patent was granted actual known mines capable of being profitably worked, so as to make the land more valuable for

mining than for other purposes, the agricultural patent can not be successfully assailed.

United States v. Central Pac. R. Co., 93 Fed. 871, p. 873.

See Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.

37. PATENT SUBJECT TO PRIOR TUNNEL SITE.

The entries and patents to lode mining claims vest the titles thereof in the locators subject to the rights of the prior claimant of a tunnel site, just as they vest them subject to the rights of adjoining lode claimants to follow the dip of veins or lodes having their apices in such locations.

Uinta Tunnel Min., etc., Co. v. Creede & Cripple Creek Min., etc., Co., 119 Fed. 164, p. 168.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 210.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 301.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222.

Branagan v. Dulaney, 8 Colo. 408, p. 412.

Lee v. Stahl, 9 Colo. 208, p. 210.

Morgenson v. Middlesex Min., etc., Co., 11 Colo. 176, p. 179.

38. TITLE SUBJECT TO VESTED WATER RIGHTS.

A provision in a patent making it subject to any vested and accrued water rights for mining or other purposes and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises granted, as provided by law, refers only to mines located outside of the claim patented which by their dip or inclination penetrate or intersect the land patented, and does not refer to a mine discovered and located within the patented premises, nor does it mean parties claiming to be "proprietors" who located mines after the issue of the patent, but only to persons who are proprietors of mines at the time the patent issued.

Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348.

A patent containing a clause making it subject to any vested and accrued water rights for mining or other purposes, and subject also to the right of the proprietor of a vein or lode to extract and remove the ore therefrom, passes the entire title as against any subsequent locator of a mining claim and no legal rights can be acquired against a patentee by a subsequent location of a mining claim.

Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348, p. 349.

See Atchison v. Peterson, 87 U. S. 507.

Bacey v. Gallagher, 87 U. S. 670.

Union Mill & Min. Co. v. Dangberg, 81 Fed. 73.

Howell v. Johnson, 89 Fed. 556.

Kern River Co., In re, 38 L. D. 302.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 306.

Osgood v. El Dorado Water, etc., Min. Co., 56 Cal. 571.

Himes v. Johnson, 61 Cal. 259.

Woolman v. Garringer, 1 Mont. 535.

K. AMENDMENTS TO SECTION 2325 REVISED STATUTES.

AMENDMENT 1.

21 Stat. 61, January 22, 1880.

AN ACT To amend sections 2324 and 2325 of the Revised Statutes of the United States concerning mineral lands.

Be it enacted etc., That Sec. 2325 of the Revised Statutes of the United States be amended by adding thereto the following words: "Provided, That where the claimant for a patent is not a resident of

or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agents is conversant with the facts sought to be established by said affidavits: And provided, That this section shall apply to all applications now pending for patents to mineral lands."

A. CONSTRUCTION OF AMENDMENT.

B. AFFIDAVIT OF AGENT.

C. AFFIDAVIT AS TO CITIZENSHIP, p. 428.

D. PATENT—EFFECT AND LIMITATION, p. 428.

A. CONSTRUCTION OF AMENDMENT.

1. EFFECT ON PENDING APPLICATIONS.

This act is given a liberal construction and so far as it relates to pending applications is remedial in effect and as it relates to future applications it is an enlarging or beneficial act and the act permits affidavits connected with an application for a mining patent to be made by an attorney or agent where the applicant himself is not a resident of, or where he is temporarily absent from, the land district, at the time of the location of the claim, but the proofs can be made by an agent only when he is conversant with the facts.

Frue, In re, 7 C. L. O. 20.

This act authorizes an application to be sworn to by an agent and in effect legalizes pending applications sworn to by an agent, though the period of publication has expired, where it has been the practice for agents to make oath to applications.

Cratty v. Routt, 7 C. L. O. 132.

B. AFFIDAVIT BY AGENT.

1. NONRESIDENCE OF CLAIMANT.

2. PRESENCE OR RESIDENCE OF CLAIMANT WITHIN DISTRICT.

3. EFFECT OF UNAUTHORIZED AFFIDAVIT.

1. NONRESIDENCE OF CLAIMANT.

Authority is given by this act to the agent of a claimant for patent to make an affidavit only where the claimant is not a resident of or within the land district, and it is to be inferred from this that Congress intended that the affidavit should be made within the land district.

Mattes v. Treasury Tunnel, Min., etc., Co., 34 L. D. 314, p. 319.

See Rico Lode, In re, 8 L. D. 223.

Not until this amendatory act was passed could an agent make the oath to an application for a mineral patent and under this act an agent can make such oath only in case the claimant for the patent is not a resident of or is not within the land district wherein the claim sought to be patented is located.

Crosby and Other Lode Claims, In re, 35 L. D. 434, p. 435.

See Drescher, In re, 41 L. D. 614.

Robbins, In re, 42 L. D. 481, p. 484.

Where an applicant for a mineral patent is not a resident of or within the land district where his claim is located, this act permits his application for patent and the necessary affidavits in connection therewith to be made by an authorized agent.

Drescher, In re, 41 L. D. 614, p. 615.

Applicants for patent for mining claims may under this act be represented by agents in the making of the required affidavit.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99.

2. PRESENCE OR RESIDENCE OF CLAIMANT WITHIN DISTRICT.

This act does not authorize an application and the necessary affidavits to be made by an agent where the applicant himself resides in or where he is physically within the land district at the time application for patent is executed.

Drescher, In re, 41 L. D. 614, p. 615.

The affidavit required of a mineral claimant can not be made by an agent where the applicant himself is a resident of and at the date of the application is within the land district where the claim is located.

Rico Lode, In re, 8 L. D. 223.

Crosby and Other Lode Claims, In re, 35 L. D. 434.

El Paso Brick Co., In re, 37 L. D. 155, p. 158.

An applicant for a mineral patent verified by an attorney in fact for the applicant made at a time when the claimant was a resident and physically within the land district is unauthorized and insufficient.

Robbins, In re, 42 L. D. 481, p. 484.

Pocatello Gold & Copper Min. Co., In re, 42 L. D. 550, p. 552.

3. EFFECT OF UNAUTHORIZED AFFIDAVIT.

Where an agent makes oath to an application under conditions not within the terms of this act the application and proceedings are invalid and can not be cured by filing a new application properly verified, nor can entry be allowed and the proceedings be submitted to the board of equitable adjudication.

Crosby and Other Min. Claims, In re, 35 L. D. 434.

See Drescher, In re, 41 L. D. 614.

Robbins, In re, 42 L. D. 481, p. 484.

Where an application for patent is sworn to by a person having no authority under the statute to make the oath, it must be treated as though it had not been sworn to at all, and an agent can only make the required oath as provided and permitted by this statute.

Crosby and Other Lode Claims, In re, 35 L. D. 434, p. 436.

See Rico Lode, In re, 8 L. D. 223.

C. AFFIDAVIT AS TO CITIZENSHIP.

This act does not change or relate to the proof of citizenship, but proof must be made under section 2335.

Phillips, In re, 8 C. L. O. 5.

D. PATENT—EFFECT AND LIMITATION.

This amendment, with the original section, indicates that Congress intended that the patent should convey all, but should be subject to all extralateral rights.

Waterloo Min. Co. v. Doe, 82 Fed. 45, p. 50.

AMENDMENT 2.

36 Stat. 459, June 7, 1910.

This amendment refers to Alaska and is with Alaska Compiled Laws, p. 879.

SECTION 2326, REVISED STATUTES.

Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within 30 days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, together with the certificate of the surveyor general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver \$5 per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor general, whereupon the register shall certify the proceedings and judgment roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

This section is the same as section 7, act of May 10, 1872 (17 Stat. 91, p. 93), p. 679. See 21 Stat. 506, p. 496; 22 Stat. 49, 1 Supp. 238, p. 502; 36 Stat. 459, p. 503.

A. CONSTRUCTION AND APPLICATION.

B. ADVERSE CLAIMS—FILING, p. 433.

C. PROCEEDINGS ON ADVERSE CLAIMS, p. 447.

D. AUTHORITY AND JURISDICTION OF LAND DEPARTMENT, p. 487.

E. PATENT—EFFECT, p. 493.

F. LAVAGNINO v. UHLIG, p. 494.

G. AMENDMENTS TO SECTION 2326 R. S., p. 496.

A. CONSTRUCTION AND APPLICATION.

1. PURPOSE AND SCOPE.
2. AUTHORITY AND CONSTRUCTION.
3. APPLICATION AND METHODS OF RELIEF.
4. DETERMINATION OF RIGHTS BY SUIT.
5. "CLAIM" AND "CLAIMANT"—MEANING.

1. PURPOSE AND SCOPE.

This with the preceding section contains the legislation in reference to adverse claims.

Enterprise Min. Co. v. Rico-Aspen Min. Co., 167 U. S. 108, p. 115.

This section provides the procedure where adverse claims are filed and suit is commenced thereon.

Seymour v. Wood, 4 C. L. O. 2.

See *Seymour v. Woods*, 4 C. L. O. 82.

The purpose of these sections is to require the conflicting claims of all parties to be adjusted and settled before a patent issues, so far as it can justly be done, at the time the application for the patent is made.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 208.

It seems that this section does not contemplate adverse proceedings after a patent has been issued.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, pp. 299, 301.

This section has no reference to an action in ejectment purely.

Wilson v. Triumph Consol. Min. Co., 19 Utah 66, p. 73.

This section should not be read as a new interpretation of the mining laws as an entirety.

Dufresne v. Northern Light Min. Co., 2 Alaska 592, p. 597.

2. AUTHORITY AND CONSTRUCTION.

This section authorizes a determination of the rights of adverse claimants to mining locations.

Gwillim v. Donnellan, 115 U. S. 45, p. 46.

The statute is not to be construed so as to exclude the right of a subsequent locator to test the lawfulness of a prior location, upon the contention that at the time such prior location was made the ground embraced therein was covered by a valid and subsisting mining claim.

Farrell v. Lockhart, 210 U. S. 142, p. 147.

The idea of the statute is that the court shall determine who is entitled to a patent, and while such determination is made upon the contingency of the filing of proceedings in a court, it is nevertheless the clear intent of the statute that contests of mining claims shall be determined by a court of competent jurisdiction.

Catron v. Lewishon, 23 L. D. 20, p. 25.

This section in no way conflicts with section 2322, and does not undertake to give to a person the right to make a valid location of a quartz lode across either the surface ground or lode of a prior locator, but simply assumes that there may be instances where there may be certain kinds of intersections of lodes where both the prior and later locators may have some rights.

Wilhelm v. Silvester, 101 Cal. 358, p. 360.

In some States statutes have been passed for the purpose of supplementing the provisions of this section and the cases in the State courts are controlled by such special statutes.

Rose v. Richmond Min. Co., 17 Nev. 25.
 Steel v. Gold Lead, etc., Min. Co., 18 Nev. 80.
 Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 804.

This section relates to the procedure where an adverse claim is filed upon an application being made for a patent; but there is nothing in its language as to whether a second location made before may prevail over a third location made after failure to do the required work, nor is anything stated in regard to the time when claims become subject to relocation, nor does it in any way designate how or when the rights of parties by location or relocation may be acquired.

Nash v. McNamara, 30 Nev. 114, p. 134.

3. APPLICATION AND METHODS OF RELIEF.

This section requires the filing of adverse claims and points out the methods to be pursued.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 73.
 Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 577.
 Lavignino v. Uhlig, 198 U. S. 443, p. 454.
 Farrell v. Lockhart, 210 U. S. 142, p. 143.
 Miner v. Mariott, 2 L. D. 709.

This section contemplates that not withstanding the provisions with reference to the rights of a locator to the possession of the surface ground, locations would overlap, and conflicts arise, and a method is provided for the adjustment of all such conflicts.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 77.
 See Peregó v. Dodge, 163 U. S. 160, p. 164.
 Black v. Elkhorn Min. Co., 163 U. S. 445.

These sections provide a method whereby all persons having adverse claims to mineral lands shall have their day in court, and if they fail to file an adverse claim within the time provided, or fail to commence the proceedings within the statutory period, any claim is waived.

Golden Reward Min. Co. v. Buxton Min. Co. 79 Fed. 868, p. 873.

This statutory provision for the final determination of conflicting claims is supplementary to the right to enforce temporary possession which has always been recognized by the rules and regulations of the mining districts.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 78.

This section provides for filing an adverse claim and prescribes the proceedings necessary to determine the right of possession to disputed ground.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 410.

This section points out the steps to be taken by an adverse claimant who resists an application for a patent to a mining claim, and his rights are forfeited or lost if he fails to avail himself of the remedy given him by this section.

Mattingly v. Lewisohn, 8 Mont. 259, p. 263.

This statute provides a method by which a court of competent jurisdiction is to determine the right of possession between two or more mining claimants without determining the character of the land involved as to whether it is mineral or non-mineral.

Wright v. Town of Hartville, 13 Wyo. 497, p. 504.

This section applies only to cases where an adverse claim is filed against the original applicant.

Little Giant Lode, In re, 22 L. D. 629, p. 630.

An adverse claimant has but the one method open to him to protect his interests and have his rights determined.

Chavanne, *In re*, 7 C. L. O. 116, p. 117.

This section has reference to adverse claims arising from independent and conflicting locations of the same ground and not to controversies between coowners of others claiming under the same location.

Nowell v. McBride, 162 Fed. 432, p. 441.

See *Turner v. Sawyer*, 150 U. S. 578.

Stevens v. Grand Central Min. Co., 133 Fed. 28.

The courts recognize the importance of extending to the locator of a mining claim every weapon in the armory of justice, offensive and defensive, to protect his right of enjoyment and secure him while prosecuting his work.

Gillis v. Downey, 85 Fed. 483, p. 488.

See *Mt. Rosa Min., etc., Co. v. Palmer*, 26 Colo. 56, p. 62.

There can be no adverse claimant entitled to the right of appeal before the department, and cases of that character should be transmitted to the department for final supervisory action.

Bell v. Aitken, 4 C. L. O. 66.

Ogg v. McDonald, Sickels' Min. L. & D. 509.

The practice under this section is applied in an adverse suit brought to determine preemption rights on the public lands in Alaska under the act of May 14, 1898 (30 Stat. 413).

Gavigan v. Crary, 2 Alaska 370, p. 377.

See *Nome-Sinook Co. v. Simpson*, 1 Alaska 578.

4. DETERMINATION OF RIGHTS BY SUIT.

The law intends by this section to give an opportunity, where there is a possibility of conflicting claims, to have the controversy decided by a judicial tribunal before the rights of either party are foreclosed by the issuance of a patent.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 584.

Hoffman v. Beecher, 12 Mont. 489, p. 498.

This and the preceding sections provide for a judicial determination of a controversy between persons contesting the possession of mineral lands, and the determination of such controversy by the court enables the Land Department to issue a patent.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 357.

This section provides for the trial of an adverse claim and the rights of the parties to the land in dispute in a court of competent jurisdiction, and the object of the law is merely to require the parties to institute such proceedings in the proper court under the different forms of action therein which the local practice permits, as no specific form of action is required by the Federal statute.

Tonopah Fraction Min. Co. v. Douglass, 123 Fed. 936, p. 940.

Parley's Park Silver Min. Co. v. Kerr, 130 U. S. 256, p. 260.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 389, p. 392.

Four Hundred and Twenty Min. Co. v. Bullion Min. Co., 9 Fed. Cas. 592.

Four Hundred and Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 53.

Iba v. Central Association, etc., 5 Wyo. 355, p. 369.

The trial of suits of this character is had in order to aid the Government through its proper department in determining whether the applicant or an adverse claimant is entitled to a patent, and while the Government is not, strictly speaking, a party to the suit, yet it is interested in the proceedings to the extent of having established by

the courts under the evidence at the trial, not only which of the parties has the better right to the claim, but also whether there has been a full compliance with the mining laws, rules, and regulations, and if neither of the parties has complied with the law in this respect the court must render judgment against both.

Tonopah Fraction Min. Co. v. Douglass, 123 Fed. 936, p. 941.

See Jackson v. Roby, 109 U. S. 440, p. 442.

Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 419.

This section contemplates that the trial in the proper court on such adverse claim shall be free from any complication or possible advantage to either party that might result from an entry in the Land Office embracing the conflict.

Long John Lode Claim, In re, 30 L. D. 298, p. 300.

The purpose of this statute seems to be that where there are two claimants to the same mine, they shall present their respective claims before a local judicial tribunal, and the result of the judicial investigation shall govern the Land Department.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 299.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 513.

Behrends v. Goldsteen, 1 Alaska 518, p. 520.

Wright v. Town of Hartville, 13 Wyo. 497, p. 509.

See Young v. Goldsteen, 97 Fed. 303, p. 306.

North Star Lode, In re, 28 L. D. 41, p. 43.

5. "CLAIM" AND "CLAIMANT"—MEANING.

The word "claim" or "claimant" is, in all legislation of Congress on the subject of adverse claims, used in regard to a claim not yet perfected by a title from the Government by way of a patent.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 299.

Wright v. Town of Hartville, 13 Wyo. 497, p. 506.

B. ADVERSE CLAIMS—FILING.

1. FILING AND NOTICE.

- a. TIME OF FILING.
- b. EFFECT OF FILING.
- c. DUTY AND NECESSITY OF FILING.
- d. WHO MAY ADVERSE.
- e. ASSUMPTIONS IN ABSENCE OF ADVERSE CLAIMS.
- f. FAILURE TO FILE—WAIVER OF RIGHTS.
- g. RIGHTS AND CLAIMS NOT WAIVED.
- h. EXCUSE FOR NOT FILING IN TIME.
- i. NOTICE OF FILING—PUBLICATION.
- j. PROPER PARTIES.

2. SUFFICIENCY IN FORM AND SUBSTANCE.

- a. OATH OF CLAIMANT—NATURE AND BOUNDARIES OF CLAIM.
- b. SUBSTANCE AND SUFFICIENCY.
- c. WHAT CONSTITUTES.
- d. DESCRIPTION OF CLAIM—SURVEY AND PLAT.
- e. CLAIMS AND INTERESTS NOT ADVERSE.
- f. CLAIMS AND INTERESTS NOT ADVERSE—INSTANCES.

3. PROTEST—FORCE AND EFFECT.

1. FILING AND NOTICE.

a. TIME OF FILING.

An adverse claimant must file his claim during the period of publication, otherwise he can only be regarded as a protestant without the right of appeal.

McGarrahan, *In re*, 11 C. L. O. 370; 3 L. D. 422.

See Cerro Bonito Quicksilver Mine, *In re*, Sickels' Min. Laws, 327.

Boston Hydraulic, etc., *Min' Co. v. Eagle Copper, etc.*, *Min. Co.*, Sickels' Min. L. & D. 320, p. 321.

While land officers are not required to transact business after office hours or on Sunday, still there is no law to prevent them from receiving and filing an adverse claim on Sunday or out of office hours.

Sayer *v. Hoosac Consol. Gold Min. Co.*, 6 C. L. O. 73.

A suit in a State court to determine an adverse claim need not be commenced within 30 days after the filing of such adverse claim, and whether a form of verdict would answer the purpose of the parties in the Land Office is of no concern to the local courts; the State courts must determine the question of the right of possession as though no contest were pending in the Land Office, and a State court does not concern itself whether or not his judgment can be used in the Land Office.

Upton *v. Santa Rita Min. Co.*, 14 N. Mex. 96, p. 111.

See Altoona Quicksilver *Min. Co. v. Integral Quicksilver Min. Co.*, 114 Cal. 100.

Gruwell *v. Rocca*, 141 Cal. 417.

b. EFFECT OF FILING.

When an adverse claim is filed, the Land Office must await the action of the adverse claimant, who is entitled to 30 days in which to commence his suit in the proper court to determine the rights asserted in his adverse claim, and on commencement of the suit the controversy is remitted to the court, but if he fails to do so, the applicant may proceed notwithstanding the filing of such adverse claim.

Gunnison Crystal *Min. Co.*, *In re*, 2 L. D. 722.

Under the provisions of this and the preceding section the filing of an adverse claim is made the first step to be taken in proceedings for determining the right of possession and title under a valid location and the proceedings thereupon are stayed until the right of the adverse claimant has been determined or waived and the adverse claimant must stand or fall by the rights which he asserts in his adverse claim, as the action brought must be based upon the rights asserted in such adverse claim.

Marshall Silver *Min. Co. v. Kirtley*, 12 Colo. 410, p. 414.

c. DUTY AND NECESSITY OF FILING.

Where an application is made for a patent to a mining claim which embraces land claimed by another it is the duty of the latter to file an adverse claim and then bring an action in a court of competent jurisdiction to determine the right to the area in conflict, but neither the statute nor public policy prevents a compromise and settlement of the dispute in any manner satisfactory to the parties even to granting to the adverse claimant an interest in or the right to all of the claim in dispute.

St. Louis *Min., etc., Co. v. Montana Min. Co.*, 171 U. S. 650, p. 655.

See *Ducie v. Ford*, 138 U. S. 587.

When the owner of a lode claim applies for a patent and another locator seeks to challenge the priority of such applicant as to the date of discovery he must file an adverse claim, and if he fails to do so he will be concluded, as this is the purpose and effect of the adverse proceedings.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 355.

Persons claiming that a relocation is not legal must show the illegality in the regular manner in a proceeding instituted for that purpose.

Little Pauline v. Leadville Lode, 7 L. D. 506, p. 509.

The law does not require an adverse claimant seeking to protect his rights in the courts to establish to the satisfaction of the department that he has complied with the requirements of the mining law to any further extent than that of properly asserting his adverse claim.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 184.
See **Bell v. Aitkin**, 4 C. L. O. 66.

d. WHO MAY ADVERSE.

A third locator is permitted to offer proof tending to establish the existence of a valid and subsisting location anterior to that of the location which is being adversed.

Street v. Delta Min. Co., 42 Mont. 371, p. 384.
See **Farrell v. Lockhart**, 210 U. S. 142.

The coowner of a mining claim must protect his property rights under the form of proceedings provided for adverse claimants.

Grampian Lode, In re, 1 L. D. 544.
Lucy B. Hussey Lode, In re, 5 L. D. 93, p. 94.

Lode claimants within a placer claim in order to protect their right to the full extent of their claim should file adversely to the placer application within the statutory period, otherwise they are restricted to their lode and 25 feet of the surface on each side thereof.

Shonbar Lode, In re, 1 L. D. 551, p. 552.
Elda Min., etc., Co. v. Mayflower Gold Min. Co., 26 L. D. 573.
Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, p. 679.
See **Becker v. Sears**, 1 L. D. 577.

Shonbar Lode, In re, 3 L. D. 388.
Pikes Peak Lode, In re, 10 L. D. 200.

Where mining regulations are made and recognized by the United States for the protection of miners, a mineral claimant who is injured by another location must file an adverse claim or protest in the local land office pending consideration of an application for patent.

Hawke, In re, 5 L. D. 131, p. 132.

This section provides specifically for the procedure to establish an adverse mining claim, and a coclaimant must protect his right under the form of procedure provided for an adverse claimant.

Monitor Lode, In re, 18 L. D. 358.
See **Grampian Lode**, In re, 1 L. D. 544.
Turner v. Sawyer, 150 U. S. 578.

Where the intersection of a vein or lode with another affects the right of possession to any part of the ground in conflict, such claim must be asserted in the proceedings and the tribunal where alone the right of possession can be determined in cases of conflicting mining locations.

Woods v. Holden, 26 L. D. 198, p. 203.

An adverse claim is the appropriate recourse of one claiming, under a possessory title only, against a valid application for patent to land subject to appropriation under the mining laws and neither this nor the preceding section has any relation to or bearing upon the question of the effect and scope of the patent.

Sinnott v. Jewett, 33 L. D. 91, p. 99.

A fraud perpetrated in the survey of a mining claim affecting an adverse claimant must be made a part of his adverse proceedings and not presented by way of protest.

Crown Point Min. Co. v. Buck, 26 L. D. 348, p. 350.

An owner who is in possession of an unpatented town lot in Alaska can adverse the application of one applying for a patent for a lode claim under this section and maintain any kind of an action in support of such adverse.

Young v. Goldsteen, 97 Fed. 303, pp. 305, 308.

See Bonner v. Meikle, 82 Fed. 697.

A town-site occupant may file an adverse claim to an application for patent by a lode claimant and have his rights protected.

Papina v. Alderson, 10 C. L. O. 52, p. 54.

Becker v. Citizens of Central City (Aug. 7, 1871).

A person claiming an interest in a mining location must, on an application for patent by another interested party, assert his right by way of an adverse claim.

Fisher v. Seymour, 23 Colo. 542, p. 551.

The rights of a tunnel locator made under section 2323 R. S., may be fully protected by permitting him to avail himself of the provisions of this section as to the filing and prosecuting of an adverse claim.

Back v. Sierra Nevada Consol. Min. Co., 2 Idaho (386, p. 391), 420.

e. ASSUMPTIONS IN ABSENCE OF ADVERSE CLAIMS.

If no adverse claim is filed with the register within 60 days from the filing of the application, the law assumes that the applicant is entitled to a patent, and third persons can not object except, perhaps, to show that the applicant has not complied with the law.

Gwillim v. Donnellan, 115 U. S. 45, p. 49.

Dahl v. Raunheim, 132 U. S. 260, p. 261.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 72.

Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 873.

Nash v. McNamara, 30 Nev. 114, p. 136.

Under this section, if the owner of one claim applies for a patent and the owner of a conflicting claim does not adverse the application, upon the establishment of a prima facie right to his patent by the applicant an indisputable presumption arises that no conflicting claims exist.

Gwillim v. Donnellan, 115 U. S. 45, p. 51.

Lavagnino v. Uhlig, 198 U. S. 443, p. 455.

Helena Gold and Iron Co. v. Baggaley, 34 Mont. 464, p. 474.

Nash v. McNamara, 30 Nev. 114, p. 136.

This section recognizes the fact that a person who, pursuant to other provisions of the statute, has acquired sufficient rights to a mining claim to entitle him to patent, will on application after publication of the statutory notice, be entitled to a patent to his claim unless adverse rights are set up in the mode provided in this section.

Lavagnino v. Uhlig, 198 U. S. 443, p. 455.

The failure to file an adverse claim within the time prescribed by law is conclusive both on the applicant and the adverse claimant, and they can not by agreement change the force of the statute, as consent can not give jurisdiction where no authority of law is given over the subject matter to be adjudicated.

Morrison v. Lincoln Min. Co., 6 C. L. O. 105.

By failure to adverse and assert his claim, an adverse claimant loses his title as against the United States.

Gwillim v. Donnellan, 115 U. S. 45, p. 51.

Any interested person who fails to file an adverse claim is thereafter precluded from calling in question the location of the applicant.

Dahl v. Raunheim, 132 U. S. 260, p. 261.

A failure to adverse within the statutory time in the absence of fraud or mistake forfeits the rights of any adverse claimant.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 208.

Eureka, etc., Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Kannaugh v. Quartette Min. Co., 16 Colo. 341.

Erwin v. Perego, 93 Fed. 608, p. 611.

After the 60 days have expired and in the absence of any adverse claim, third persons can thereafter make no objection to the issue of a patent unless it is shown that the applicant has failed to comply with the requirements of the law.

Dahl v. Raunheim, 132 U. S. 260, p. 261.

f. FAILURE TO FILE—WAIVER OF RIGHTS.

If a person adversely interested fails to file an adverse claim he waives his rights acquired under his location and the patent when issued relates back as of the date of the original location.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Stranger Lode, In re, 28 L. D. 321, p. 325.

Conway, In re, 29 L. D. 388, p. 389.

Grampton Lode, In re, 1 L. D. 544.

Cunningham, In re, 10 C. L. O. 206, p. 207.

Steel v. Gold Lead Gold, etc., Min. Co., 18 Nev. 80, p. 87.

See Lowe, In re, 9 C. L. O. 192, p. 193.

Lee v. Stahl, 9 Colo. 208, p. 210.

Seymour v. Fisher, 16 Colo. 188, p. 191.

Kannaugh v. Quartette Min. Co., 16 Colo. 341, p. 346.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 59.

A failure to file an adverse claim within the time and in the manner provided by law defeats all rights of an adverse claimant.

Seymore v. Wood, 4 C. L. O. 2.

Seymore, In re, Copp's Min. Lands 224.

The failure of an interested person to file an adverse claim during the period of publication of notice constitutes a waiver of any claim a claimant may have to the land involved and the forfeiture of all right then to be heard on the question of ownership.

Sinnott v. Jewett, 33 L. D. 91, p. 99.

This section provides that by failure to assert an adverse claim a claimant may lose any rights which he has in the same way that a defendant in an action may lose his right by default, and a failure to answer; and it provides also how rights already obtained may be defended, determined, preserved, or forfeited.

Nash v. McNamara, 30 Nev. 114, p. 135.

If a lode claimant fails to file an adverse claim against a placer application, he must be restricted to his lode claim and 25 feet only of the surface ground on each side.

Shonbar Lode, In re, 10 C. L. O. 18.

Searl v. Finn, 10 C. L. O. 119, p. 120.

The law fixes a time and method by which parties disputing a claim of an applicant for patent to a mining claim may be heard, and the failure to adverse an application is an admission under the law that no such adverse claim exists, and a party can not, after the expiration of the time of publication, be heard to set up either an equitable or legal title to the claim.

Wight v. Tabor, 2 L. D. 738.

On failure to file an adverse claim during the period of publication the usual course of mineral adjudication should not be suspended or delayed.

Santa Rita Mines, In re, 1 L. D. 579, p. 580.

Any claim or right to a mill site within a patented mining claim is lost by failure to properly adverse on the application for the patent.

Warren Mill Site v. Copper Prince, 1 L. D. 555, p. 556.

g. RIGHTS AND CLAIMS NOT WAIVED.

Where an adverse claimant to a mining property during the pendency of an action brought by him to determine the adverse claim files an amended application with the Land Department, and obtains a patent thereunder for adjoining land, the obtaining of such patent does not operate as a waiver of his adverse claim.

Mackay v. Fox, 121 Fed. 487, p. 490.

Distinguishing Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683.

A waiver of a claim to a mining location by a corporation executed by its president is not an act which will operate to estop him from afterwards asserting his individual rights as against the party to an agreement with the corporation where the parties interested knew of the claim in the individual right of the president of such corporation.

Nichols v. Becker, 11 L. D. 8, p. 15.

An abandonment by the owner of a part of the disputed territory of a mining claim after the filing of an adverse claim is not a waiver of the adverse claim, as the adverse claim is the claim made by the party opposing the application, and the only party who can waive such claim is the one who makes it.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683.

Mackay v. Fox, 121 Fed. 487, p. 491.

The failure of a tunnel owner before discovery of mineral to adverse an application for a surface patent does not estop him from asserting a right prior to the date of discovery named in the certificate of location upon which the patent for the surface lode claim is based.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 359.

Lawson v. United States Min. Co., 207 U. S. 1, p. 15.

See *Enterprise Min. Co. v. Rico-Aspen Min. Co.*, 167 U. S. 108.

United States Min. Co. v. Lawson, 134 Fed. 769.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 593.

Corning Tunnel Co. v. Pell, 4 Colo. 507.

Back v. Sierra Nevada, etc., Min. Co., 2 Idaho (386) 420.

The failure to file an adverse claim to an application for patent does not estop a tenant in common of a mining claim from maintaining an action in a State court to quiet his title to an undivided interest in such claim.

Butte Hardware Co. v. Cobban, 13 Mont. 351, p. 356.

h. EXCUSE FOR NOT FILING IN TIME.

A pending suit on an adverse claim, in order to excuse an applicant for a mineral patent from prosecuting his proceedings in the Land Department to completion within a reasonable time, must be such a suit as the statute contemplates, brought to determine the question of the right of possession and maintaining that character up to the time of its final determination, and not a dead suit, subsisting solely as a matter of record and within the power of the applicant, who is the defendant, to dismiss, and it must have for its end the decision of a controverted question of the right of possession of the particular mining claim as between the parties thereto and in view of which the

statute requires a stay of proceedings in the Land Department until its determination by the proper court.

Ring v. Montana Loan & Realty Co., 33 L. D. 132, p. 136.

See Cain v. Addenda Min. Co., 29 L. D. 62.

Marburg Lode Min. Claim, In re, 30 L. D. 202.

Where an applicant for a patent for a mining claim is prevented on any valid ground from completing his entry within a reasonable time after the expiration of the period of publication of notice of his application he can not be charged with negligence.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 209.

Adams v. Polglase, 32 L. D. 477, p. 479.

Where an adverse claimant has in good faith done all that is within his power to comply with the rule of the department the rule should not be held to operate as a bar to his claim where he has otherwise complied with the statute.

Hawkeye Placer v. Gray Eagle Placer, 15 L. D. 45, p. 47.

Jenny Lind v. Eureka, Copp's Min. Lands, 124.

Adverse claimants are held to reasonable diligence under the law in taking necessary steps to protect their interests, but they may show that a survey could not be made within the period of publication on account of climatic or other temporary difficulties.

Wallace, In re, 1 L. D. 582, p. 583.

i. NOTICE OF FILING—PUBLICATION.

An allegation of an adverse possessory right of a mining claim upon a plat showing distinctly the ground claimed is good notice of such claim, and if a proceeding has been based thereon in a competent tribunal the Land Department can not declare it ineffective.

Robinson v. Mayger, 1 L. D. 538.

An application for a mineral patent can not be allowed where the description in the published notice of application is not in accordance with the survey.

Hoffman v. Venard, 14 L. D. 45.

See Alabama Quartz Mine, In re, 14 L. D. 563.

The publication of the proper notice for the prescribed period by the land office on an application for a patent for mineral lands is due process of law.

Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 873.

The first publication in a weekly newspaper made on January 16, would give until March 17 for filing an adverse claim and would give 30 days from that date in which the adverse claimant must commence his action in the proper court, and a suit commenced on April 21 would be on the thirty-second day after the last date, or two days too late.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 181.

j. PROPER PARTIES.

The legal heirs of the locator of a mining claim who have executed an agreement to convey at a future time such claim to another are the proper persons to adverse the application of a junior locator.

Wolverton v. Nichols, 119 U. S. 485, p. 496.

In all contests over mining claims the Government is an interested party so far as to see that the claimants have complied with the mining requirements before obtaining title to any land.

Rutter v. Shoshone Min. Co., 75 Fed. 37, p. 38.

In proceedings for the acquisition of title from the United States the Government is a party in fact to the proceeding, and the objection of alienage, no matter by whom suggested, is based solely on the right of the Government to interpose the fact of alienage as a bar to procuring or holding an interest in realty.

O'Reilly v. Campbell, 116 U. S. 418.
 Billings v. Aspen Min., etc., Co., 51 Fed. 338.
 Lohman v. Helmer, 104 Fed. 178, p. 181.

2. SUFFICIENCY IN FORM AND SUBSTANCE.

a. OATH OF CLAIMANT—NATURE AND BOUNDARIES OF CLAIM.

The plaintiff in an action for possession of a mining claim must show a marking of the boundaries, a recording of the location notice, and discovery of mineral.

Overgaard v. Westerberg, 3 Alaska 168, p. 179.
 Cascaden v. Bortolis, 3 Alaska 200, p. 204.
 See Book v. Justice Min. Co., 58 Fed. 106, p. 113.

An adverse claim shall be filed during the period of publication and it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of the claim, and all proceedings shall thereupon be stayed until the controversy is settled.

McFadden v. Mountain View Min., etc., Co., 26 L. D. 530, p. 531.
 Doe v. Waterloo Min. Co., 43 Fed. 219, p. 226.
 Anchor v. Howe, 50 Fed. 366.
 Mattes v. Treasury Tunnel Min., etc., Co., 33 L. D. 553, p. 555.
 Mattes v. Treasury Tunnel. Min., etc., Co., 34 L. D. 314.
 McMurdy v. Streeter, 1 C. L. O. 34.
 City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.
 Hawley Consol. Min. Co. v. Memnon Min. Co., 2 C. L. O. 178.
 Bell v. Aitken, 4 C. L. O. 66.
 Willard, In re, 4 C. L. O. 67.
 Tioga Consol. Min. Co., In re, 8 C. L. O. 88, p. 89.

The adverse claim must be upon the oath of the person making it and show the nature, boundaries, and the extent of such adverse claim, and it must show that there is a conflict between different locators of the same claim.

Turner v. Sawyer, 150 U. S. 578, p. 587.
 Frank Hough Min. Co. v. Empire State Min. Co., 42 L. D. 99, p. 102.

Where an application for a patent is made an adverse claim must be filed within 60 days and must be accompanied by the oath of the person filing it, showing the natural boundaries and extent of his adverse claim. Proceedings are then stayed until the controversy is settled by a court of competent jurisdiction.

Jackson v. Roby, 109 U. S. 440, p. 442.
 Richmond Min. Co. v. Rose, 114 U. S. 576, p. 581.
 Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 873.

An adverse claim must show the nature, boundaries, and extent of the adverse claim asserted; but an adverse claimant is not required to describe his claim more particularly than is the applicant for the patent.

Diekman v. Good Return Min. Co., 14 C. L. O. 237.

The showing of boundaries and extent of an adverse claim required by this section means surface boundaries, and can not be construed to refer to the underground limits to which the claim may possibly, after development, be shown to extend.

Gilmer (John T.), In re, Sickels Min. L. & D. 252, p. 253.
 Tiger Silver Min. Co., In re, Sickels Min. L. & D. 263.

The principal officer of the corporation may, for and as the act of the corporation, verify an adverse claim at the principal place of business of the corporation outside of the land district where the claim is situated.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 101.

An adverse claim must show the nature, boundaries, and extent thereof, and if in describing these it expressly excepts all ground in conflict, then it shows on its face that it is not in fact an adverse claim.

Robinson v. Mayger, 9 C. L. O. 5.

An adverse claimant must show the nature, boundaries, and extent of his adverse claim and must commence proceedings in the proper court to determine the question of the right of possession.

Pardee v. Murray, 4 Mont. 234, p. 276.

b. SUBSTANCE AND SUFFICIENCY.

An adverse claim made in good faith and which clearly and definitely notifies the applicant for a patent of the conflict between his and the adverse mining claim is sufficient to comply with the object of the statute.

Anchor v. Howe, 50 Fed. 366, p. 367.

See *McFadden v. Mountain View Min., etc., Co.*, 27 L. D. 358, p. 360, vacating *McFadden v. Mountain View Min., etc., Co.*, 26 L. D. 530.

Kinney v. Von Bokern, 29 L. D. 460, p. 461.

This section does not expressly declare what kind of an adverse claim is required to be set up as a defense against the applicant; but the word "claim" as generally used by Congress refers to a claim not yet perfected by a title from the Government by way of a patent.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 299.

See *Young v. Goldsteen*, 97 Fed. 303, p. 306.

Where an adverse claim is filed it is the duty of the Land Office to determine whether such adverse claim is made out in due form or properly alleged and when properly presented the Land Office has no further jurisdiction and can not inquire into the merits of the case.

Ovens v. Stephens, 2 L. D. 699, p. 702.

This section provides what an adverse claim shall contain and the procedure thereon in a court of competent jurisdiction and the result that shall follow the judgment of such court.

Behrends v. Goldsteen, 1 Alaska 518, p. 519.

An adverse claim on the part of a corporation is sufficient in form where it is signed with the name of such corporation by a person named as agent, general manager, and attorney-in-fact, who verifies the same before a proper notary public, who certifies that such named person is the general manager, agent, and attorney-in-fact of the corporation named and the agent swears that the corporation was duly organized under the laws of a certain named State.

Philadelphia Min. Co. v. Finley, 10 C. L. O. 340.

Where the certificates of a clerk of a court showing the beginning and pendency of a suit on an adverse claim are filed with the Land Department after the expiration of the period of publication of notice of the application for patent and are sworn to, and do not show the nature, boundaries, and extent of the claim to the mineral land involved in such suit, they can not be regarded as constituting an adverse claim and a suit thereon within the meaning of this section.

Selma Oil Claim, In re, 33 L. D. 187, p. 189.

The adverse notice or claim must set forth the nature and extent of any conflict whether the adverse party claims as a purchaser for value or as a locator, and if a purchaser then he shall produce a copy of the original location, the original conveyance or copy, or an abstract of title, together with the date of the purchase and the amount paid, all of which is to be supported by affidavits.

McFadden v. Mountain View Min., etc., Co., 26 L. D. 530, p. 531.

C. WHAT CONSTITUTES.

The contemplation of this section in respect to adverse proceedings is that there shall be a present tangible and certain right to be determined and not a mere possibility.

Enterprise Min. Co. v. Rico-Aspen etc. Min. Co., 167 U. S. 108, p. 115.
Poore v. Kaufman, 44 Mont. 248, p. 253.

This section authorizes proceedings only as to ground embraced in an application for patent, and ground excluded or relinquished by an applicant can not be made the subject of proceedings under this section.

Shields v. Simington, 27 L. D. 369, p. 372.
 See *Woods v. Holden*, 26 L. D. 193.
Woods v. Holden, 27 L. D. 375.

A questionable title obtained at a judicial sale of a mining claim, pending proceedings for patent, whether valid or void, is an adverse claim, and is lost if not presented as required by statute.

Hamilton v. Southern Nevada Gold, etc., Min. Co., 33 Fed. 562, p. 565.

The owner of a tunnel mining claim may file an adverse claim against one who applies for a patent to a lode mining claim which has been located across the line of his tunnel and is based on a discovery made in a shaft directly over the line of such tunnel.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 208.
Ellet v. Campbell, 18 Colo. 510.
Back v. Sierra Nevada, etc., Min. Co., 2 Idaho (386) 420.
Hope Min. Co. v. Brown, 11 Mont. 370.

The questions as to the time of the location of a mill site and as to whether or not the locator has complied with the State laws are both questions of title and must be determined by a court on proceedings instituted by the adverse claimant.

Bay State Gold Min. Co. v. Trevillion, 10 L. D. 194.

An action may be maintained under this section to establish the ownership and rights of possession to mining ground in dispute where a survey of one claim includes a strip of land within another claim.

Meyer-Clarke-Rowe Mines Co. v. Steinfeld, 9 Ariz. 245, p. 247.
 See *Meyer-Clarke-Rowe Mines Co. v. Steinfeld*, 10 Ariz. 194.

An adverse claim presented to the Land Department which discloses the fact that the adverse claimant holds it under a patent already issued is entirely consistent with an action of ejectment based upon such patent to obtain possession.

Larned v. Jenkins, 113 Fed. 634, p. 638.

The term "adverse claim" used in section 2332, Revised Statutes, refers to the adverse claim mentioned in this section.

McCowan v. McClay, 16 Mont. 234, p. 240.

D. DESCRIPTION OF CLAIM—SURVEY AND PLAT.

The words "and the description required in other cases," used in this section, contemplate a plat and field notes of the survey properly made and approved by the surveyor general as required in applications for lode claims.

Harsh, In re, 2 L. D. 706.

The term "description required in other cases," used in this section, refers to the certificate of the surveyor general to the effect that the plat is correct and to such further description by reference to natural objects or permanent monuments as shall identify the claim and furnish an accurate description for the patent.

Donlan, In re, 39 L. D. 353, p. 354.

Where an application for patent for a placer claim upon surveyed land conforms to legal subdivisions, an adverse claimant is not required to furnish a further survey or plat.

Diekman v. Good Return Min. Co., 14 C. L. O. 237.

It is sufficient where an adverse claimant, instead of the survey required, files a plat made from field notes of the applicant's survey and location certificates of such adverse claim, duly certified by the United States deputy mineral surveyor, with an explanation that by reason of the altitude of the location and the constant snows an actual survey was not practicable.

Philadelphia Min. Co. v. Finley, 10 C. L. O. 340.

In surveying a claim, if it is found that two surveys conflict, the plat and field notes should show the extent of such conflict and give the area embraced in both surveys and the distances from the established corners at which the respective boundaries of the respective surveys intersect.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 80.

While the Government does not design that its mineral lands shall be patented upon any survey except those specifically provided for, yet no patent is issued upon an official survey in case of an adverse claim until after an investigation by a court, where any error in the survey can be corrected and no injury result therefrom.

Anchor v. Howe, 50 Fed. 366, p. 367.

See *McFadden v. Mountain View Min., etc., Co.*, 27 L. D. 358, p. 360, vacating *McFadden v. Mountain View Min., etc., Co.*, 26 L. D. 530.

In ascertaining the boundaries of a mining claim, monuments definitely established control courses and distances, and where monuments are not definitely established and identified, then courses and distances must be followed unless they are irreconcilable, and in such cases courses prevail over distances.

Meyer-Clarke-Rowe Mines Co. v. Steinfeld, 9 Ariz. 245, p. 249.

Meyer-Clarke-Rowe Mines Co. v. Steinfeld, 10 Ariz. 194.

An adverse claim must show the nature, boundary, and extent of the claim on the oath of the claimant.

Wallace, In re, 1 L. D. 582.

City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.

Hawley Consol. Min. Co. v. Memmon Min. Co., 2 C. L. O. 178.

Bell v. Aitken, 4 C. L. O. 66.

Snead v. Deadwood Min. Co., 7 C. L. O. 50.

Stuart Min. Co. v. Wooster, 7 C. L. O. 51.

Wheeler, In re, 7 C. L. O. 130.

Diekman v. Good Return Min. Co., 14 C. L. O. 237.

The adverse claimant is only required by law to file his claim during the period of publication, showing its nature, boundaries, and extent, and to bring a suit for a recovery of possession within days 30 thereafter; and the only question which can ever arise is whether such adverse claimant has complied with these requirements.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 184.

Chambers v. Pitts, Sickles' Min. Dec. 293.

Each locator of a mining claim on his application to the surveyor general is entitled to the survey of the entire claim as located if he has otherwise complied with the law.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 80.

Where another mining claim is referred to in a location notice it will be presumed to be a well-known natural object or permanent monument until the contrary is proved.

Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 299.

Credo Min., etc., Co. v. Highland Min., etc., Co., 95 Fed. 911, p. 914.

A rule of the General Land Office to the effect that a plat showing the boundaries of the conflicting premises must be made from an actual survey by a United States surveyor is void as imposing a requirement not contemplated by the statute.

Anchor v. Howe, 50 Fed. 366.

See *McFadden v. Mountain View Min., etc., Co.*, 27 L. D. 358, p. 360, vacating *McFadden v. Mountain View Min., etc., Co.*, 26 L. D. 530.

Where it is impossible to obtain a survey of an adverse claim the adverse claimant may show the nature, extent, and boundaries of his claim from other sources and give sufficient reason for not properly presenting an adverse claim.

Hoffman v. Beecher, 12 Mont. 489, p. 497.

See *Wallace*, In re, 1 L. D. 592.

An objection to the protest on the ground that it does not show the nature, boundaries and extent of the claim must be made in the Land Office and can not be made after the commencement of the suit on the adverse claim.

Hoffman v. Beecher, 12 Mont. 489, p. 497.

See *Richmond Min. Co. v. Rose*, 114 U. S. 576.

Rose v. Richmond Min. Co., 17 Nev. 25.

c. CLAIMS AND INTERESTS NOT ADVERSE.

Adverse proceedings are called for only when one mineral claimant contests the right of another mineral claimant, and whatever may be the propriety or advantage of a tunnel owner contesting the right of the owner of a lode-mining claim to a patent, within the boundaries of whose claim the tunnel is being driven, such adverse proceedings can not be adjudged necessary, as Congress has not specifically required it.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 360.

Where the owners of conflicting or overlapping claims have compromised and settled all such conflicts and have agreed upon their several lines, in a subsequent application for a patent by one of the locators, the other is not bound to file an adverse claim or contest his right in a judicial proceeding, but may rely upon his contract of compromise, and either he, or his grantees, or assigns, may enforce the rights conceded by such compromise agreement.

St. Louis Min. Co. v. Montana Min. Co., 171 U. S. 650, p. 655.

Conflicting adverse rights can not be set up to defeat an application for a patent in the absence of an alleged surface conflict, as a possible union of veins underneath the surface can not be foreshadowed at the time an application for a patent is made, and such subsequent arising conditions must be adjusted by reference to surface apex ownership and priority of location not involving surface conflict.

Lawson v. United States Min. Co., 207 U. S. 1, p. 16.

Keely v. Ophir Hill Consol. Min. Co., 169 Fed. 601, p. 603.

Proceedings instituted in a local court by a placer patentee against another claimant is not an adverse proceeding within the purview of the statute and the judgment in such case can not be accorded the conclusive effect which attaches to a judgment rendered in an adverse proceeding as contemplated by the statute.

North Star Lode, In re, 28 L. D. 41, p. 43.

The owner of a mining claim can not file an adverse claim to an application for patent for lands adjoining his claim on the theory that the entry of such adjoining lands will interfere with his right to follow his vein on its dip into such adjoining land, as the statute itself fully protects this right and it can not constitute an adverse claim within the meaning and intent of the law.

Gilmer (John T.), In re, *Sickles Min. L. & D.* 252, p. 253.

An adverse claim is unnecessary where the survey for another lode crosses the premises of such adverse claimant, as the ground in conflict is already patented and will be excepted from the patent issued under the subsequent application, but the rule does not apply when the premises conveyed by the patent are incorrectly described therein.

Ramage, In re, 2 C. L. O. 115.

Under this section the ownership on the intersection of veins is determined by the priority of title, but the intersection of veins does not give rise to an adverse claim.

Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, p. 64.

See *Champion Min. Co. v. Consolidated Wyo. Gold Min. Co.*, 75 Cal. 78.

An alleged claim or interest to a portion of a placer claim which is traced to and over the same location upon which the right of an applicant for patent rests is not an adverse claim within the meaning of this section.

Suessenbach v. First Nat'l Bank, 5 Dak. 477, p. 501.

See *Hunt v. Patchin*, 35 Fed. 816.

Where a party owns the fee in a mining claim he is not called upon to file an adverse claim under this section or commence the action as directed therein, and the statute providing for such an action has no application.

Bennett v. Harkrader, 158 U. S. 441, p. 447.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286.

An applicant for patent for a mining claim is not required, in order to preserve his rights, to file an adverse claim against a subsequent application for the same ground while his own application is pending in the Land Department.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 67.

Steel v. Gold Lead Gold, etc., Min. Co., 18 Nev. 80, p. 88.

See *Crown Point Lode, In re, Sickles' Min. Dec.* 116.

Chavanne, In re, Sickles' Min. Dec. 243.

Where no surface conflicts exist, there can be no stay of proceedings upon an adverse claim filed by another claimant.

Eureka Min. Co. v. Pioneer Consol. Min. Co., 8 C. L. O. 106.

There is no propriety in maintaining a suit to establish a mere inchoate right or a purely speculative matter as to whether a vein would be discovered in a tunnel and thereby delay the surface locator from securing a patent, upon a mere possibility which might never ripen into a fact.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 115.

f. CLAIMS AND INTERESTS NOT ADVERSE—INSTANCES.

The undivided interest of a coowner in a mining location is not an adverse claim as contemplated by this section and the coowner is not required to file an adverse claim in case of an application by the other coowners for patent to the entire claim, and if a patent is issued to the remaining coowners they will hold the title in trust for such unrepresented coowner.

Turner v. Sawyer, 150 U. S. 578, p. 586.

Overruling Grampian Lode, In re, 1. L. D. 544.

Hussey Lode, In re, 5 L. D. 93.

Monitor Lode, In re, 18 L. D. 358.

The coowner of a mining claim is not required to file an adverse suit where a party does not claim a prior location of the lode, but asserts that he, as coowner, had acquired another person's interest by legal proceedings.

Turner v. Sawyer, 150 U. S. 578, p. 587.

Brundy v. Mayfield, 15 Mont. 201, p. 209.

Where the surface ground included in an application for a patent does not conflict with that of an adjoining claimant, the latter can not question the right of the former to his patent, and where the boundary between two claims is undisputed the foundation for an adverse suit is lacking and subterranean rights must be adjusted on other principles than the right of adverse claimants.

Lawson v. United States Min. Co., 207 U. S. 1, p. 17.

Keely v. Ophir Hill Consol. Min. Co., 169 Fed. 601, p. 604.

The claimant of a tunnel site is not required to file an adverse claim and submit his rights to the lode claims in process of adjudication by the Land Department upon the filing of applications for patents by such lode claimants, when his rights are at such time contingent and intangible.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 355.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 112.

Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, pp. 209, 210.

Uinta Tunnel Min., etc., Co. v. Creede & Cripple Creek Min., etc., Co., 119 Fed. 164, p. 168.

See *Calhoun Gold Min. Co. v. Ajax Gold Min. Co.*, 182 U. S. 499.

A town-site entry and patent can only embrace lands not known to be mineral at the time of entry, and such an entryman has no standing as an adverse claimant against an application for patent for a mining claim.

Ryan v. Granite Hill Min. and Dev. Co., 29 L. D. 522, p. 524.

3. PROTEST—FORCE AND EFFECT.

A mere protest filed in the Land Department against the issuance of a patent to an applicant for a patent to a mining claim has no force or effect except to suggest to the land officers that there has been an error and that proceedings be stayed until further examination can be had, but it does not bring such protestant into court for the assertion of his own right or title, and if he fails to properly adverse as required by statute he loses all rights if his protest is overruled.

Neilson v. Champagne Min., etc., Co., 119 Fed. 123, p. 125.

A protest against the application of a patent to lands selected under this statute in lieu of lands surrendered within the forest reservation district is sufficient if it alleges in express terms that the lands selected were mineral in character and therefore not subject to selection under this forest reserve lieu land act.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 40.

Where matters alleged in a protest against a mineral application may be made the subject of legitimate inquiry in an adverse proceeding they will not be entertained during the pendency of the adverse judicial proceedings.

Crown Point Min. Co. v. Buck, 26 L. D. 348, p. 350.

This section clearly points out the way in which an adverse claim may be asserted, and neither the allegation of adverse ownership nor the allegation of failure to perform the annual assessment work presents any question to the Land Department; but such allegations have no other effect than to give the protestant a status under the rules of practice and give him the right of appeal.

Opie v. Auburn Gold Min., etc., Co., 29 L. D. 230.

Where no adverse claims are asserted and an applicant for a patent for a mineral claim has complied with the statutory requirements, objection from third parties to the issuance of a patent can not be heard.

Anderson v. Amador & Sacramento Canal Co., 10 L. D. 572, p. 574.

In the absence of an adverse claim a protestant can not be recognized as an appellant upon an application for a mining claim upon its merits.

Kemp v. Starr, 6 C. L. O. 3, p. 4.

C. PROCEEDINGS ON ADVERSE CLAIMS.

1. TIME OF COMMENCEMENT.
2. WHAT CONSTITUTES COMMENCEMENT.
3. NATURE AND PURPOSE OF PROCEEDINGS.
4. LEGAL AND EQUITABLE ACTIONS.
5. PROCEEDINGS INSUFFICIENT.
6. JURISDICTION OF COURTS.
 - a. MEANING AND APPLICATION.
 - b. COURTS OF COMPETENT JURISDICTION—MEANING.
 - c. FEDERAL OR STATE COURTS.
 - d. FEDERAL QUESTIONS—EFFECT ON JURISDICTION.
 - e. STATE COURTS—EXTENT AND AUTHORITY.
 - f. STATE COURTS—KINDS OF ACTIONS—PRACTICE.
 - g. POWER OF CONGRESS TO REGULATE STATE COURT PROCEEDINGS.
 - h. EQUITY JURISDICTION.
 - i. WAIVER OF OBJECTIONS TO JURISDICTION.
7. QUESTIONS FOR DETERMINATION BY COURTS.
 - a. POSSESSORY RIGHTS ONLY DETERMINED.
 - b. DETERMINATION BY COURT—PROOF BEFORE LAND DEPARTMENT.
 - c. TITLE OF UNITED STATES NOT AFFECTED BY COURT'S DECISION.
 - d. VALIDITY OF ORIGINAL LOCATION.
 - e. QUESTION OF DISCOVERY.
 - f. PERFORMANCE OF REPRESENTATION WORK.
 - g. RESUMPTION OF WORK.
 - h. QUESTION OF ABANDONMENT.
 - i. QUESTION AS TO RELOCATION.
 - j. CHARACTER OF LAND IN CONTROVERSY.
 - k. UNDERGROUND RIGHTS.
 - l. WAIVER OR RELINQUISHMENT.
 - m. PROOF OF CUSTOMS.
 - n. PRESUMPTIONS INDULGED BY COURTS.
8. DILIGENCE IN PROSECUTIONS OF PROCEEDINGS.
9. STAY OF PROCEEDINGS IN LAND OFFICE.
10. WHAT PROCEEDINGS ARE NOT STAYED.
11. FAILURE TO COMMENCE PROCEEDINGS WITHIN STATUTORY TIME—EFFECT.
12. SUIT COMMENCED AFTER EXPIRATION OF TIME—EFFECT AND RIGHTS.
13. TERMINATION OF PROCEEDINGS.
 - a. BY DISMISSAL.
 - b. OTHER METHODS OF TERMINATION.
14. QUESTIONS NOT WITHIN COURT'S JURISDICTION.

15. PLEADING AND PRACTICE.

- a. CLAIMS MUST BE ASSERTED BY PROPER PLEADING.
- b. SUFFICIENCY OF COMPLAINT.
- c. CITIZENSHIP—PLEADING AND PROOF.
- d. INTERVENTION BY INTERESTED PERSON.
- e. DEFENSE—SUFFICIENCY OF ANSWER.

16. RECOVERY—PROOF.

- a. RIGHT TO RECOVER—PROOF OF TITLE—BURDEN.
- b. RECOVERY BY EITHER OR BOTH PARTIES.
- c. NEITHER PARTY ENTITLED TO RECOVER.
- d. PROOF SUFFICIENT TO SUSTAIN CLAIM.

17. CONCLUSIVENESS OF JUDGMENT.

- a. QUESTION CONCLUDED BY JUDGMENT.
- b. CONCLUSIVENESS OF JUDGMENT OF STATE COURT.
- c. CONCLUSIVENESS AS BETWEEN LODE AND PLACER CLAIMANTS.
- d. CONCLUSIVENESS OF JUDGMENT ON LAND DEPARTMENT.

18. CERTIFIED COPY OF JUDGMENT.

1. TIME OF COMMENCEMENT.

This section provides for the bringing of a suit upon the filing of an adverse claim.

Anthony v. Jillson, 83 Cal. 296, p. 297.

This section requires the person asserting an adverse claim to a vein or lode to set up such claim when an application is made for a patent and within 30 days thereafter to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession and to prosecute the same diligently to final judgment.

- Jackson v. Roby*, 109 U. S. 440, p. 442.
Chambers v. Harrington, 111 U. S. 350, p. 351.
Richmond Min. Co. v. Rose, 114 U. S. 576, p. 581.
Gwillim v. Donnellan, 115 U. S. 45, p. 49.
Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 297.
Ducie v. Ford, 138 U. S. 587, p. 591.
Kendall v. San Juan Min. Co., 144 U. S. 658, p. 662.
Perego v. Dodge, 163 U. S. 160, p. 165.
Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 115.
Del Monte Min., etc., Co. v. Last Chance Min. Co., 171 U. S. 55, p. 77.
Steves v. Carson, 42 Fed. 821.
Doe v. Waterloo Min. Co., 43 Fed. 219, p. 220.
Rutter v. Shoahone Min. Co., 75 Fed. 37, p. 38.
Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 544.
Golden Reward Min. Co. v. Buxton Min. Co., 79 Fed. 868, p. 873.
Bonner v. Meikle, 82 Fed. 697, p. 698.
Erwin v. Perego, 93 Fed. 608, p. 609.
California Oil & Gas Co. v. Miller, 96 Fed. 12, p. 18.
First National Gold Min. Co. v. Altvater, 149 Fed. 393, p. 394.
Nettie Lode v. Texas Lode, 14 L. D. 180, p. 182.
Castner, In re, 17 L. D. 565, p. 567.
Cape May Min. & Leasing Co. v. Wallace, 27 L. D. 676, p. 678.
Lewis, In re, 4 C. L. O. 114.
Williams, In re, 16 C. L. O. 110, p. 111.
Allen v. Myers, 1 Alaska 114, p. 117.
Providence Gold Min. Co. v. Marks, 7 Ariz. 74, p. 76.
Hunt v. Eureka Gulch Min. Co., 14 Colo. 451, p. 452.
Mares v. Dillon, 30 Mont. 117, p. 138.

The law requiring the commencement of a suit within the specified time is mandatory as to subsequent proceedings in the Land Office, while the requirement that the adverse claimant shall notify the office of the commencement of suit is an office regulation.

Halsey v. Hewitt, 5 C. L. O. 162.

The action must be commenced by the adverse claimant in a court of competent jurisdiction as provided in this section, and neither the Land Office nor the Interior Department can waive the requirement.

Downey v. Rogers, 2 L. D. 707, p. 708.

The State statute may be looked to as a safe and convenient guide in determining whether due diligence had been taken and used in commencing an action under this section.

Mars v. Oro Fino Min. Co., 7 S. Dak. 605, p. 616.

The adverse claimant is required to commence his proceedings in some court of competent jurisdiction to determine the right of possession to the ground in dispute, and according to the judgment of such court the rights of the parties are finally determined in the Land Office.

Providence Gold Min. Co. v. Burke, 6 Ariz. 323, p. 330.

2. WHAT CONSTITUTES COMMENCEMENT.

The proceedings in a court are properly begun where the declaration or complaint is filed within the 30 days though the summons is not issued and service had on the defendant within the 30 days.

De Garcia v. Eaton, 22 L. D. 16, p. 17.

Where a State law provides that civil actions shall be commenced by the filing of a complaint with the clerk of a court and the issuance of a summons thereon, such adverse claimant must comply strictly with the requirement or a suit will not be commenced within the meaning of this section.

Harriet Min. Co. v. Phoenix Min. Co., 9 C. L. O. 165.

What constitutes the commencement of an action in a State court is a matter of State law, and the decision of a State court upon that point is not a Federal question and is not subject to review in a Federal court.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 583.

See *Gypsum Placer Claims*, In re, 37 L. D. 484, p. 488.

The time within which an action founded on an adverse claim is commenced in the State court is fixed by the Federal statute and can not be controlled by a State statute, but the question as to what constitutes the commencement of an action may be determined by a State statute.

Harris v. Helena Gold Min. Co., 29 Nev. 506, p. 512.

See *Rose v. Richmond Min. Co.*, 17 Nev. 25.

An adverse claimant must commence his suit in a court of competent jurisdiction within the specified time, and it is made the duty of the Land Department to be governed by the final judgment in the case and to issue a patent accordingly.

People v. District Court, 19 Colo. 343, p. 347.

A suit is not commenced within the meaning of this section until a summons is issued, and the filing of a complaint merely without having summons issued is not contemplated.

Lonergan v. Eddy, 7 C. L. O. 82.

Where a complaint on an adverse claim was filed in a State court within 30 days as required by this section, appearance to the action and the filing of a demurrer

after the expiration of the 30 days is a waiver of the issuance of process within the 30 days.

Harris v. Helena Gold Min. Co., 29 Nev. 506, p. 516.

See *Iowa Min. Co. v. Bonanza Min. Co.* 16 Nev. 64.

The commencement of a suit in a court not within the judicial district embracing the claim is not a compliance with the statute.

Nevada Reservoir Ditch Co. v. Rogers, 6 C. L. O. 105.

Under the statute of South Dakota a proceeding under this section is not properly begun within the statutory period where the summons is merely placed in the hands of the officer; but the plaintiff must see that it is properly served within a reasonable time.

Mars v. Oro Fino Min. Co. 7 S. Dak. 605, p. 618.

A suit on an adverse claim under this section must be brought within 30 days from the filing of the claim, and a complaint properly filed within the required time but stating no cause of action, can not after the expiration of the statutory period be amended so as to state a good cause of action.

Keppler v. Becker, 9 Ariz. 234, p. 238.

See *Providence Gold Min. Co., v. Marks*, 7 Ariz. 74.

A claim initiated nearly five years after the completion of the necessary proceedings in the Land Office should not be entertained in a suit waged in pursuance of the filing of an adverse claim under this section.

Wheeler v. Smith, 5 Wash. 704, p. 706.

By this statute the suit must be instituted by the adverse claimant; but if a person becomes vested with the title between the institution of such adverse claim and the commencement of the action he would be entitled to bring and maintain the action in his own name.

Willitt v. Baker, 133 Fed. 937, p. 944.

3. NATURE AND PURPOSE OF PROCEEDINGS.

The proceedings authorized by this section are purely statutory and are for special relief, and may be for equitable relief, and are regarded as a continuance of the proceedings before the Land Department to have a determination of the question as to which of the contesting parties is entitled to a patent.

Wolverton v. Nichols, 119 U. S. 485, p. 489.

Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 295.

Perego v. Dodge, 163 U. S. 160, p. 165.

Gird v. California Oil Co., 60 Fed. 531, p. 532.

Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 804.

Durrant v. Corbin, 94 Fed. 382.

Giberson v. Wilson, 79 Ark. 581, p. 583.

Healey v. Rupp, 37 Colo. 25, p. 28.

Burke v. McDonald, 2 Idaho (310, p. 313) 339.

Murray v. Polglase, 23 Mont. 401, p. 414.

Nesbitt v. De Lamar's Nevada Gold Min. Co., 24 Nev. 273, p. 287.

Deeney v. Mineral Creek Mill. Co., 11 N. Mex. 279, p. 287.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 111.

Iba v. Central Association, etc., 5 Wyo. 355, p. 365.

See *Doe v. Waterloo Min. Co.*, 43 Fed. 219.

McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 673.

Durgan v. Redding, 103 Fed. 914, p. 917.

Tonopah Fraction Min. Co. v. Douglass, 123 Fed. 936, p. 939.

An action under this section in a State court is not brought to recover possession of the property or damages for trespass thereon, or to quiet title thereto, but is a special action to determine the right of possession preliminary to the right to purchase

from the United States, and an action may be brought by a plaintiff whether in or out of possession of the mining ground, and each party must prove his claim to the premises in dispute and the better claim prevails.

Lee Doon v. Tesh, 68 Cal. 43;
 McGinnis v. Egbert, 8 Colo. 41;
 Burke v. McDonald, 2 Idaho (310, p. 323) 339.
 Steel v. Gold Lead, etc., Min. Co., 18 Nev. 80, p. 87.

While the term "proceedings" is broader and more comprehensive than the term "action" yet the term "proceedings" in this section is used in the sense of "action" and refers to the commencement of an action. And the term "proceedings" in this section is used to enable a party to institute such proceedings under the different forms of actions allowed by the State and Federal courts.

Mars v. Oro Fino Min. Co. 7 S. Dak. 605, p. 617.
 See Chambers v. Harrington, 111 U. S. 350.
 Four Hundred Twenty Min. Co. v. Bullion, 9 Fed. Cas. No. 592.
 Cronin v. Bear Creek Gold Min. Co., 3 Idaho 614.
 Mattingly v. Lewisohn, 13 Mont. 508.
 Golden Fleece Min. Co. v. Cable Consol., etc., Min. Co., 12 Nev. 312.

The proceeding to obtain a patent to a mining claim under this section is judicial in character.

Allen v. Myers, 1 Alaska 114, p. 120.

An action authorized by this section is purely possessory in its character.

Duffield v. San Francisco Chemical Co., 198 Fed. 942, p. 944.
 Lockhart v. Farrell, 31 Utah 155, p. 158.

The proceeding directed and authorized by this section has no relation whatever to the action of ejectment or to any other common law action, and the sole object of the proceeding is the determination of the contest that arose in the Land Office and to determine which of the applicants is entitled to receive a patent from the Government.

Doe v. Waterloo Min. Co., 43 Fed. 219, p. 220.
 Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 804.
 Young v. Goldsteen, 97 Fed. 303, p. 308.
 Nesbitt v. De Lamar's Nevada Gold Min. Co., 24 Nev. 273, p. 287.

An action may be brought under this section whether the plaintiff is in or out of possession of the mining ground in controversy and the "only sensible construction of the law is that each party must prove his claim to the premises in dispute and that the better claim must prevail."

Golden Fleece Gold & Silver Min. Co., v. Cable Consol. Gold & Silver Min. Co. 12 Nev. 312

Steel v. Gold Lead Gold & Silver Min. Co., 18 Nev. 80, p. 87

It is the intention of this section that the suit contemplated by the adverse claimant shall be directed to establishing the equitable right of possession between the parties, and the right to apply for a patent for the premises from the United States, but the Government is not estopped by the decision in the suit from inquiring into the validity or legality of the claim.

Alice Placer v. Addie Stevens & Lazy Bill Lodes, 3 Brainard Leg. Prec. 242, p. 245.

The statute makes the proceedings regularly prosecuted when the period of notice is completed without filing an adverse claim conclusive against all adverse claimants and the proceedings in their nature are in rem, and binding upon all the world.

Nesbitt v. De Lamar, Nevada Gold Min. Co., 24 Nev. 273, p. 287.
 See Hamilton v. Southern Nevada, etc., Min. Co., 33 Fed. 562.

The purpose of an action brought under this section is to determine for the information of the Land Department whether either of the parties by compliance with the mining laws has acquired the right of possession of the mining claim in controversy,

and each must rely on the strength of his own title, and not on the weakness of his adversary.

Murray Hill Min., etc., Co. v. Havenor, 24 Utah 73, p. 78.

The intention of adverse proceedings authorized by this section is not to determine any of the rights of the United States, or the rights of the contestants to a patent, but it is for the information of the Land Department to determine as between the litigants the right to the possession of the mining claim in dispute.

Lavagnino v. Uhlig, 26 Utah 1, p. 22.

An action instituted on an adverse claim as required by this section is purely statutory and State statutes regulating generally actions for the recovery of real property or for questions relating to the title are not applicable.

Lily Min. Co. v. Kellogg, 27 Utah 111, p. 114.

In an action on an adverse claim no title in fee can be established but the question is the priority of right to purchase the fee; but if the party owns the fee he is not called upon to file an adverse claim or commence an action, and in such case the statute has no application.

Lily Min. Co. v. Kellogg, 27 Utah, 111, p. 114.

An action brought in support of an adverse claim must be based on the right asserted in such claim, as it must be assumed that no adverse claim exists except such as has been filed.

Lily Min. Co. v. Kellogg, 27 Utah 111, p. 115.

Marshal Silver Min. Co. v. Kirtley, 12 Colo. 410, p. 415.

4. LEGAL AND EQUITABLE ACTIONS.

After the adverse claim has been filed an action at law or a suit in equity will lie, as either may be appropriate under the particular circumstances, as it may be an action to recover possession when the plaintiff is out of possession, or a suit to quiet title when he is in possession.

Bennett v. Harkrader, 158 U. S. 441, p. 447.

Perego v. Dodge, 163 U. S. 160, p. 165.

Young v. Goldsteen, 97 Fed. 303, p. 308.

Durgan v. Redding, 103 Fed. 914, p. 917.

Tonopah Fraction Min. Co. v. Douglas, 123 Fed. 936, p. 938.

Keppler v. Becker, 9 Ariz. 234, p. 238.

Mares v. Dillon, 30 Mont. 117, p. 139.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 112.

Actions brought by adverse claimants to settle the right of possession and the right to a patent to mining claims are equitable in their nature and are not legal.

Rutter v. Shoshone Min. Co., 75 Fed. 37, p. 38.

Providence Gold Min. Co. v. Burke, 6 Ariz. 323, p. 329.

See Hammer v. Garfield Min., etc., Co., 130 U. S. 291.

Shoshone Min. Co. v. Rutter, 87 Fed. 801.

California Oil & Gas Co. v. Miller, 96 Fed. 12, p. 18.

Young v. Goldsteen, 97 Fed. 303, p. 308.

Allen v. Myers, 1 Alaska 114, p. 118.

An action on an adverse claim under this section is essentially a law action and contains no elements of equity jurisdiction.

Ware v. White, 81 Ark. 220, p. 223.

An action under this section is an action in equity to quiet title under the State statute of Montana and in order to maintain an action the plaintiff must allege and prove his possession.

Montana Ore Purchasing Co. v. Boston & Montana Copper, etc., Min. Co., 27 Mont. 288, p. 312.

See *Wolverton v. Nichols*, 5 Mont. 89.

Mantle v. Noyes, 5 Mont. 274; 5 Pac. 856.

Garfield Min., etc., Co. v. Hammer, 6 Mont. 53.

This section does not provide what form of action shall be brought by the adverse claimant, and it may be ejectment, a suit to try the right to real property under the statute, an action to quiet title, or the form ordinarily used in adverse actions, but when it appears that the object of such a suit is to contest the right to a mining claim as against an applicant for a patent, it is necessary to allege and prove that the plaintiff is a citizen of the United States or has declared his intention to become such.

Allyn v. Schultz, 5 Ariz. 152, p. 159.

See *Lee Doon v. Teah*, 68 Cal. 43.

Anthony v. Jillson, 83 Cal. 296.

Rosenthal v. Ives, 2 Idaho (244) 265.

An action in the nature of ejectment is the proper form of action to support an adverse claim filed under this section, but no proof by plaintiff of an actual ouster is necessary, and an action may be maintained though the plaintiff is in the actual possession and occupancy of the disputed premises, or if at the time the suit is commenced the premises are not in the actual possession of any person.

Becker v. Pugh, 9 Colo. 589, p. 593.

McFeters v. Pierson, 15 Colo. 201, p. 206.

Iba v. Central Association, etc., 5 Wyo. 355, p. 360.

The plaintiff who brings a purely legal action of ejectment must recover on the strength of his legal title, and if the plaintiff has only equities, they must be presented in an equity action.

Lockhart v. Johnson, 181 U. S. 516, p. 529.

Thompson v. Burke, 2 Alaska 249, p. 255.

5. PROCEEDINGS INSUFFICIENT.

An ordinary action to quiet title to a mining claim, though brought by a contestant in an application for a patent, is not a suit on an adverse claim within the meaning of this section.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100, p. 101.

Gruwell v. Rocca, 141 Cal. 417, p. 419.

See *Four Hundred Twenty Min. Co. v. Bullion Min. Co.*, 9 Nev. 240.

A suit to quiet title by a town-site patentee against a mineral claimant is not a proceeding in court contemplated by this section, and does not operate as a stay of proceedings in the Land Department on such mineral application.

Ryan v. Granite Hill Min. & Dev. Co., 29 L. D. 522, p. 524.

6. JURISDICTION OF COURTS.

a. MEANING AND APPLICATION.

This section does not prescribe or create jurisdiction, but the controversy is to be decided according to the laws and procedure of the local tribunal.

Smelting Co. v. Kemp, 104 U. S. 636, p. 656.

Chambers v. Harrington, 111 U. S. 350, p. 351.

Wolverton v. Nichols, 119 U. S. 485, p. 486.

Perego v. Dodge, 163 U. S. 160, p. 168.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 578.

De Lamar's Nevada Gold Min. Co. v. Nesbitt, 177 U. S. 523, p. 527.

Nome-Sinook Co. v. Simpson, 1 Alaska 578, p. 583.

See *Gavigan v. Crary*, 2 Alaska 370, p. 397.

Bechtol v. Bechtol, 2 Alaska 397.

Rose v. Richmond Min. Co., 17 Nev. 25.

This section makes no attempt to confer any new jurisdiction upon any court.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 107.

Congress did not intend by section 2325 or this section or by the amendatory act of March 3, 1881 (21 Stat. 505), to prescribe jurisdiction in any particular court, State or Federal; but the local court may determine the action without any controversy as to the acts of Congress in relation to patent proceedings; and Federal questions are not necessarily involved; and the local court shall be guided and controlled as to jurisdiction, practice, and procedure by the law of the forum, and by the laws, regulations, and customs of the mining district, and the statute confers no power or jurisdiction upon the local courts by the provisions in relation to patent proceedings; and the general powers or jurisdictions of such courts are not limited thereby.

Nome-Sinook Co. v. Simpson, 1 Alaska 578, p. 584.

See *Gavigan v. Crary*, 2 Alaska 370.

Bechtol v. Bechtol, 2 Alaska 397.

The powers that may be exercised by a court in proceedings instituted by an adverse claimant do not depend upon departmental decisions, but upon statutory provisions.

Conway, In re, 29 L. D. 388, p. 389.

This section gives a court jurisdiction of suits only when the parties are all mining claimants and when the land in controversy is unpatented Government land, and a court would not have jurisdiction in a suit on an adverse claim where the parties were all mining claimants and a patent had already been issued to one, or where one party is a mining claimant and the other a town-site claimant, whether the patent had been issued or not.

Wright v. Town of Hartville, 13 Wyo. 497, p. 504.

The failure to pay the fees as required by a State statute has no effect over the jurisdiction of a court as to the time of the commencement of the proceedings on an adverse claim.

Catron v. Lewisohn, 23 L. D. 20, p. 25.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 582.

The jurisdiction of a court contemplated by this section is of a controversy between individual claimants and not as between the applicant and the Government.

Perego v. Dodge, 163 U. S. 160, p. 168.

See *United States v. Jones*, 131 U. S. 1.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 694.

The principle that several parties having conflicting claims to property may come into an ordinary court and litigate their conflicting claims is applied to mining locations after a patent is issued.

Turner v. Sawyer, 150 U. S. 578, p. 585.

In adverse suits preliminary to a patent to mining land, not merely questions of law arising under the statutes of the United States, but questions of fact and questions arising under local rules and customs and State statutes are open for consideration.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 511.

b. COURTS OF COMPETENT JURISDICTION—MEANING.

The statute requires a judicial proceeding in a competent court by an adverse claimant. While the court is not specifically designated, yet it undoubtedly means a court of general jurisdiction, State or Federal, and the usual rules of practice, including appeals, must prevail.

Chambers v. Harrington, 111 U. S. 350, p. 351.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 581.

A court of competent jurisdiction is the proper forum in which contests between conflicting mining claimants can be heard, and matters will not be determined by the land officers which might have been presented in such court upon an adverse claim duly filed.

Warren Mill Site v. Copper Prince, 1 L. D. 555.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584.

Ovens v. Stephens, 2 L. D. 699, p. 703.

The proper court and not the Land Office is the proper forum to determine controversies between adverse claimants and an applicant.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 182.

All questions of adverse claims and adverse rights shall be adjudicated by a court of competent jurisdiction and this is the only tribunal where such claims can properly be adjudicated.

Williams, In re, 17 L. D. 282, p. 284.

Under this section as it originally stood when an adverse claim was filed, the parties were referred to any court of competent jurisdiction, and the question between the successful party and the Government was left to the determination of the commissioner of the General Land Office.

Burke v. Bunker Hill, Min., etc., Co., 46 Fed. 644, p. 647.

The jurisdiction of a court of competent jurisdiction as provided in this section depends entirely upon the correct description of the mining claim, and such a court has jurisdiction over the lands or parties dependent entirely upon the location of such claim as shown by the description; and a misdescription of the claim may be sufficient to oust the jurisdiction of the court and defeat the adverse claimant.

Wheeler v. Smith, 23 L. D. 395, p. 399.

Every right that can be acquired under the mining laws can be fully protected in a court of competent jurisdiction as against any other conflicting right or claim arising under the same laws, except rights of the United States.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584.

By this section Congress confided to local tribunals the determination of the rights of conflicting claimants, referring to courts of competent jurisdiction, that is courts already having jurisdiction of similar controversies.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96 p. 108.

This section transfers the jurisdiction over the controversy on the filing of an adverse claim from the Land Department to the proper court and the department has no jurisdiction to act until the controversy has been determined in the court.

Deeney v. Mineral Creek Mill. Co., 11 N. Mex. 279, p. 293.

C. FEDERAL OR STATE COURTS.

Congress did not by this section intend to prescribe jurisdiction in any particular court, State or Federal.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 578.

The intention of Congress as expressed in this section was to leave open to suitors all courts competent to determine the question of the right of possession.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 579.

If the usual conditions of Federal jurisdiction such as adverse citizenship do not exist, and the necessary amount is not in controversy, then the party claimant must proceed in a State court.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 579.

Shoshone Min. Co. v. Rutter, 177 U. S. 505.

Overruling (expressly or by implication):

- Burke v. Bunker Hill Min., etc., Co., 46 Fed. 644.
 Rutter v. Shoshone Min. Co., 75 Fed. 37.
 Shoshone Min. Co. v. Rutter, 87 Fed. 801.
 California Oil & Gas. Co. v. Miller, 96 Fed. 12.

d. FEDERAL QUESTIONS—EFFECT ON JURISDICTION.

The question as to whether or not the original locator of a mining claim is subsequently estopped to deny the validity of the original location, is not a Federal question within the statute authorizing a litigant to remove a cause from a State court to the Federal court in an action on an adverse claim.

Speed v. McCarthy, 181 U. S. 269, p. 275.

See Gillis v. Stinchfield, 159 U. S. 658.

Pittsburgh Iron Co. v. Cleveland Iron Min. Co., 178 U. S. 270.

The fact that a suit is brought under this section to try adverse rights to a mining claim does not necessarily involve a Federal question so as to give a Federal court jurisdiction.

McMillen v. Ferrum Min. Co., 197 U. S. 343, p. 347.

See Bushnell v. Croke Min., etc., Co., 148 U. S. 682.

Telluride Power Co. v. Rio Grande R. Co., 175 U. S. 639.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571.

Shoshone Min. Co. v. Rutter, 177 U. S. 505.

McFadden v. Mountain View Min., etc., Co., 87 Fed. 154.

McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 673.

The inference from the language of this section is that the competency of the adjudicating court is not to be determined by the mere fact that the mining claims in controversy consist of lands the title of which is in the United States, as in such case no other than a Federal court would have been mentioned.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 579.

Overruling (expressly or by implication):

Burke v. Bunker Hill Min., etc., Co., 46 Fed. 644.

Rutter v. Shoshone Min. Co., 75 Fed. 37.

Shoshone Min. Co. v. Rutter, 87 Fed. 801.

California Oil & Gas Co. v. Miller, 96 Fed. 12.

The mere fact that an action is brought pursuant to this section, to determine conflicting rights to the possession of a mining claim does not of itself give a Federal court jurisdiction.

Larned v. Jenkins, 109 Fed. 100.

See Blackburn v. Portland Gold Min. Co., 175 U. S. 571.

Shoshone Min. Co. v. Rutter, 177 U. S. 505.

Suit brought in support of an adverse claim is not a suit arising under the laws of the United States in such sense as to confer jurisdiction alone on Federal courts.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 109 Fed. 504, p. 507.

The fact that an action was brought by virtue of this section does not exempt the complainant from the necessity of showing that the value of the property in controversy is sufficient to give the Federal courts jurisdiction.

Yellow Aster Min., etc., Co. v. Winchell, 95 Fed. 213, p. 214.

See Chambers v. Harrington, 111 U. S. 350.

Strasburger v. Beecher, 44 Fed. 209, p. 213.

Burke v. Bunker Hill, etc., Min., etc., Co., 46 Fed. 644.

Shoshone Min. Co. v. Rutter, 87 Fed. 801.

Quigley v. Gillett, 101 Cal. 462, p. 471.

A suit instituted by an adverse claimant under this section may be brought in the district court of Alaska but must be brought under the provisions of the Alaska Code for trying title or to recover possession of real estate.

Allen v. Myers, 1 Alaska 114, p. 119.

An application to transfer a case brought under this section, to a Federal court must show that the matter in dispute is claimed by both parties.

Back v. Sierra Nevada Consol. Min. Co., 46 Fed. 673, p. 675.

Under this section a mere controversy as to the right of possession does not necessarily involve a Federal question and confer jurisdiction upon a Federal court.

De Lamar's Nevada Gold Min. Co. v. Nesbitt, 177 U. S. 523, p. 527.

Bushnell v. Crooke Min., etc., Co., 148 U. S. 682.

Gillis v. Stinchfield, 159 U. S. 658.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 507; overruling Rutter v. Shoshone Min. Co., 75 Fed. 37 and Shoshone Min. Co. v. Rutter, 87 Fed. 801; and by implication overruling Frank Gold, etc., Min. Co. v. Larimer Min., etc., Co., 8 Fed. 724.

Cheesman v. Shreeve, 37 Fed. 36.

Doe v. Waterloo Min. Co., 43 Fed. 219.

Strasburger v. Beecher, 44 Fed. 209.

Burke v. Bunker Hill, etc., Min. Co., 46 Fed. 644.

Wise v. Nixon, 76 Fed. 3.

See Bunker Hill, etc., Min. Co. v. Shoshone Min. Co., 109 Fed. 504.

Bunker Hill, etc., Min. Co. v. Shoshone Min. Co., 33 L. D. 142, p. 143.

A suit or proceeding brought in support of an adverse claim under this section is not a suit arising under the laws of the United States in such a sense as to confer jurisdiction on a Federal court, regardless of the citizenship of the parties.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 579.

Shoshone Min. Co. v. Rutter, 177 U. S. 505.

Overruling (expressly or by implication):

Burke v. Bunker Hill Min., etc., 46 Fed. 644.

Rutter v. Shoshone Min. Co., 75 Fed. 37.

Shoshone Min. Co. v. Rutter, 87 Fed. 801; 59 U. S. App. 538.

California Oil & Gas Co. v. Miller, 96 Fed. 12.

Congress evidently contemplated the fact that a controversy about a right of possession might as appropriately be decided in a State as in a Federal court, and not prescribing in which court it should be litigated, left this question to be determined by the ordinary rules in respect to the jurisdiction of Federal courts.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 511.

The fact that Congress left the jurisdiction over cases in which the matter in controversy did not exceed \$2,000 in value in the State courts, conclusively shows that Congress was not intending to carve out a new jurisdiction for the Federal courts, and that it did not doubt that the State courts would carry into effect its enactments in reference to limitations and procedure.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 512.

Overruling (expressly or by implication):

Burke v. Bunker Hill Min., etc., Co., 46 Fed. 644.

Rutter v. Shoshone Min. Co., 75 Fed. 37.

Shoshone Min. Co. v. Rutter, 87 Fed. 801.

The mere fact that a suit is an adverse suit authorized by the statutes of Congress is not in and of itself sufficient to vest jurisdiction in the Federal courts.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 513.

A proceeding brought under this section is an exception to the rule as to the essentials of a Federal question, as such a suit is but a step in a purely statutory procedure which has its inception in the Land Office, and as Congress has no power to confer jurisdiction on a State court it is reasonable to presume that the statute confers jurisdiction on Federal courts.

California Oil & Gas Co. v. Miller, 96 Fed. 12, p. 18 (overruled by implication).

See Blackburn v. Portland Gold Min. Co., 175 U. S. 571.

Shoshone Min. Co. v. Rutter, 177 U. S. 505.

De Lamar's Nevada Gold Min. Co. v. Nesbitt, 177 U. S. 523.

The Federal courts have jurisdiction to determine questions arising in an action on an adverse or disputed mining claim.

Frank Gold, etc., Min. Co. v. Larimer Min., etc., Co., 8 Fed. 724.

c. STATE COURTS—EXTENT AND AUTHORITY.

A State court may properly determine a controversy between rival claimants under this section, and its judgment can not be reviewed by the United States Supreme Court simply because the parties were claiming rights under a Federal statute.

- Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 584.
 Bushnell v. Crooke Min. Co., 148 U. S. 682, p. 690.
 Gillis v. Stinchfield, 159 U. S. 658, p. 659.
 Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 506.
 De Lamar's Nevada Gold Min. Co. v. Nesbitt, 177 U. S. 523, p. 526.
 Allen v. Myers, 1 Alaska 114, p. 116.
 Nome-Sinook Co. v. Simpson, 1 Alaska 578.
 Matlock v. Stone, 77 Ark. 195, p. 199.
 Giberson v. Wilson, 79 Ark. 581, p. 583.
 Ware v. White, 81 Ark. 220, p. 223.
 Lee Doon v. Tesh, 68 Cal. 43.
 McGinnis v. Egbert, 8 Colo. 41.
 Leland v. McDonald, 2 Idaho (283, p. 285), 307.
 Swanson v. Kettler, 17 Idaho 321, p. 325.
 Flynn Group Min. Co. v. Murphy, 18 Idaho 266, p. 269.
 Batterton v. Douglas Min. Co., 20 Idaho 760, p. 762.
 Upton v. Larkin, 7 Mont. 449, p. 451.
 Flavin v. Mattingly, 8 Mont. 242, p. 244.
 O'Donnell v. Glenn, 8 Mont. 248, p. 250.
 Mattingly v. Lewisohn, 8 Mont. 259, p. 263.
 Flick v. Gold Hill, etc., Copper Min. Co., 8 Mont. 298, p. 302.
 Freezer v. Sweeney, 8 Mont. 508, p. 511.
 Shreve v. Copper Bell Min. Co., 11 Mont. 309, p. 328.
 Coleman v. Curtis, 12 Mont. 301, p. 302.
 Mattingly v. Lewisohn, 13 Mont. 508, p. 515.
 Basin Min. & Concentrating Co. v. White, 22 Mont. 147.
 Murray v. Polglase, 23 Mont. 401, p. 413.
 Hopkins v. Butte Copper Co., 29 Mont. 390.
 Mares v. Dillon, 30 Mont. 117, p. 129.
 Woody v. Hinds, 30 Mont. 189, p. 190.
 Nichols v. Williams, 38 Mont. 552.
 Copper Mountain Min., etc., Co. v. Butte & Corbin Consol. Copper, etc., Min. Co., 39 Mont. 487, p. 489.
 Golden Fleece Min. Co. v. Cable Consol., etc., Min. Co., 12 Nev. 312, p. 318.
 Harris v. Helena Gold Min. Co., 29 Nev. 506, p. 512.
 Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 107.
 Pierce v. Rock Creek Min. Co., 37 Ore. 342, p. 343.
 Gorman Min. Co. v. Alexander, 2 S. Dak. 557, p. 559.
 Mars v. Oro Fino Min. Co., 7 S. Dak. 605, p. 607.
 Hulst v. Doerstler, 11 S. Dak. 14, p. 15.
 McCarthy v. Speed, 11 S. Dak. 362.
 McCarthy v. Speed, 12 S. Dak. 7.
 Elder v. Horseshoe Min., etc., Co., 15 S. Dak. 124.
 See Back v. Sierra Nevada Consol. Min. Co., 2 Idaho (386), 420.
 Armstrong v. Lower, 6 Colo. 393, p. 394.
 Rosenthal v. Ives, 2 Idaho (244) 265.
 Schultz v. Keeler, 2 Idaho (305) 333.
 Burke v. McDonald, 2 Idaho (646) 679.
 Hamburg Min. Co. v. Stephenson, 17 Mont. 449, p. 454.
 Wetzstein v. Boston, etc., Copper, etc., Min. Co., 26 Mont. 193.
 Wetzstein v. Largey, 27 Mont. 212, p. 217.
 Montana Ore Purchasing Co. v. Boston & Montana Copper, etc., Min. Co., 27 Mont. 288, p. 295.
 Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, p. 53.
 Butte Consol. Min. Co. v. Barker, 35 Mont. 327, p. 331.
 Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240, p. 244.
 Steel v. Gold Lead Gold, etc., Min. Co., 18 Nev. 80, p. 84.

See *Nesbitt v. De Lamar's Nevada Gold Min. Co.*, 24 Nev. 273, p. 280.
Seidler v. Lafave, 4 N. Mex. 389.
Illinois Silver Min., etc., Co. v. Raff, 7 N. Mex. 336, p. 339.
Lincoln Lucky & Lee Min. Co. v. Hendry, 9 N. Mex. 149, p. 151.
Lockhart v. Wills, 9 N. Mex. 344, p. 346.
Lockhart v. Leeds, 10 N. Mex. 568, p. 593.
Deeney v. Mineral Creek Mill. Co., 11 N. Mex. 279, p. 287.
Perego v. Dodge, 9 Utah 3.

This section does not confer any special jurisdiction on State courts, but an action may be brought in either a State or a National court at law or in equity, as the statute does not provide the form of action.

Allen v. Myers, 1 Alaska 114, p. 119.

In the absence of diverse citizenship and where there is no question as to the meaning and construction of the statute, State courts are regarded, within the letter and meaning of this section, as courts of competent jurisdiction to determine the right of possession.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 588.
Sheehone Min. Co. v. Rutter, 177 U. S. 505, p. 507.

A State court has jurisdiction to determine a controversy as to the ownership of a mining claim in an action brought by an adverse claimant, where the ownership of the property is distinctly in issue, and such an action is for a court and not for the Land Department.

Lightner Min. Co., v. Superior Court, etc., 14 Cal. App. 642, p. 647.

Where a State court assumes that the plaintiff is claiming rights under this section authorizing an advertising of the application for patent to mineral lands and that theory was acted upon the appeal from the State court to the Supreme Court will not be dismissed.

Lavagnino v. Uhlig, 198 U. S. 443, p. 451.

An action to determine the title to a mining claim located on land included in another claim must be brought in the county where such land is located.

Erwin v. Perego, 93 Fed. 608, p. 610.

In an action on an adverse claim under this section a State court has no jurisdiction to review the action of the officers of the Land Department in holding that a plat and adverse claim conformed to their rules, but a State court has the power to inquire whether an adverse claim has been framed in accordance with the requirements of this section.

Hoffman v. Beecher, 12 Mont. 489, p. 497.

A court may substitute words denoting different directions in order to bring the survey back to the starting point.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 116.
 See *Hoffman v. Beecher*, 12 Mont. 489, p. 497.

f. STATE COURTS—KINDS OF ACTIONS—PRACTICE.

State courts adopt the forms of action by which the title to land is tried, and these may be ejectment or a bill to quiet title, but the real question to be determined is who is entitled to possession.

Murray v. Polglase, 23 Mont. 401, p. 414.
 See *Garfield Min., etc., Co. v. Hammer*, 6 Mont. 53.
Hoffman v. Beecher, 12 Mont. 489.

An action to determine the right of possession as authorized by this section is an action at law in the Territory of Idaho, and the parties are entitled to a trial by jury.

Burke v. McDonald, 2 Idaho (310, p. 314) 339.

An action in ejectment may be maintained in a State court based on an adverse claim filed under this section.

Wenner v. McNulty, 7 Mont. 30, p. 32.

See Upton v. Larkin, 7 Mont. 449, p. 451.

Flavin v. Mattingly, 8 Mont. 242, p. 244.

An action in the State court under this section may be in ejectment or to quiet title according to the possession of the parties at the time suit is commenced.

Murray v. Polglase, 23 Mont. 401, p. 413.

The statute of Montana makes it immaterial which party is in possession in an action brought under this section, and a State court has jurisdiction if it appears from the pleadings that an application for patent has been made and an adverse claim filed.

Hopkins v. Butte Copper Co., 29 Mont. 390, p. 394.

Mares v. Dillon, 30 Mont. 117, p. 141.

This section as well as the act of May 10, 1872 (17 Stat. 91), supplemented by the statute of Nevada passed February 10, 1873, gives the district courts of the State of Nevada jurisdiction to determine the right of possession as between adverse claimants; and any such claimant whether in or out of possession must commence his action to determine the right within 30 days after filing his adverse claim; but he is not required to prove his own right of possession affirmatively and also to disprove the claim of his adversary by negative testimony.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 320.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 52.

See Scorpion Silver Min. Co. v. Marsano, 10 Nev. 370, p. 379.

When relief is afforded by the courts of a State, the rules of pleading and the methods of procedure of the State must be followed, yet the matters settled ought to be under the provisions of this section, or the relief will be wholly inadequate and the determination would be of no advantage to either the litigant or the Government.

Iba v. Central Association, etc., 5 Wyo. 355, p. 363.

In an action for the possession of a mining claim under this section the parties are entitled to a trial by jury.

Iba v. Central Association, etc., 5 Wyo. 355, p. 360.

See Manning v. Strehlow, 11 Colo. 451.

G. POWER OF CONGRESS TO REGULATE STATE COURT PROCEEDINGS.

Congress while authorizing a suit upon an adverse claim has no power to regulate the practice or to prescribe the form of the action in the State court.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 108.

See Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100, p. 101.

The jurisdiction of a State court to try and dispose of questions arising on an adverse claim is not derived from the act of Congress, and Congress can not prescribe the time within which an action may be brought to determine an adverse claim to mineral lands.

Bernard v. Parmelee, 6 Cal. App. 537, p. 540.

A State court does not concern itself with the question as to whether or not its judgment can be used in the Land Office.

Nome-Sinook Co. v. Simpson, 1 Ala. 578, p. 590.

Quigley v. Gillett, 101 Cal. 462.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100.

Gruwell v. Rocca, 141 Cal. 417, p. 420.

See Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Fed. Cas. 592.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240.

Congress can not impose upon the State courts the duty and labor of determining for the Land Department who is entitled as between conflicting claimants to purchase from the Government; and the question of the right of possession to a mining claim may be determined by a State court, by a proceeding authorized by a State law and not by reason of the United States statute.

Gruwell v. Rocca, 141 Cal. 417, p. 419.

The laws of California authorize superior courts to determine adverse claims to land when the parties bring the issue before the court in a proper manner.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100.
Gruwell v. Rocca, 141 Cal. 417, p. 419.

h. EQUITY JURISDICTION.

A court of equity is a court of competent jurisdiction within the meaning of this section in which a suit in support of an adverse claim to an application for a patent for mining ground may be maintained where it appears that neither of the parties is in possession, but the jurisdiction of a Federal court is dependent in such case upon diversity of citizenship.

Willitt v. Baker, 133 Fed. 937, p. 943.

See Shoshone Min. Co. v. Rutter, 87 Fed. 801.

Larned v. Jenkins, 109 Fed. 100.

United States Min. Co. v. Lawson, 115 Fed. 1005, p. 1006.

A proceeding under this section to determine the right of possession to a mining claim, though purely statutory, may be brought and maintained in a court of equity.

Doe v. Waterloo Min. Co., 43 Fed. 219, p. 222.

Shoshone Min. Co. v. Rutter, 87 Fed. 801, p. 804.

Tonopah Fraction Min. Co. v. Douglas, 123 Fed. 936, p. 939.

Providence Gold Min. Co. v. Burke, 6 Ariz. 323, p. 329.

It is now a common practice in cases where irremedial mischief is being done or threatened, going to the destruction of the substance of the estate, such as the extraction of ores from a mine, or the removal of coal, to issue an injunction, though the title to the premises be in litigation.

Erhardt v. Boaro, 113 U. S. 527, p. 539.

Chapman v. Toy Long, 8 Fed. Cas. 497.

Bishop v. Baisley, 28 Oreg. 119, p. 140.

See Stevens v. Williams, 23 Fed. Cas. 40.

Allen v. Dunlap, 24 Oreg. 229, p. 232.

Duffy v. Mix, 24 Oreg. 265.

Old Telegraph Min. Co. v. Central Smelting Co., 1 Utah 331.

Equity will enjoin a trespass on a mining claim, but it will not under the guise of an injunction try title to such a claim where the remedy is legal.

Chapman v. Toy Long, 8 Fed. Cas. 497, 4 Sawy. 28, p. 33.

Bishop v. Baisley, 28 Oreg. 119, p. 140.

i. WAIVER OF OBJECTIONS TO JURISDICTION.

Where a defendant to a suit on an adverse claim appears and proceeds to try without raising the objection that the suit was not commenced in time, he thereby waives it and can not insist on the objection upon appeal.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 583.

Where an adverse claimant has filed his complaint in the proper court within 30 days and the parties have gone to trial, the defendants can not be permitted to raise the question of the lack of jurisdiction in the court because of the nonpayment of fees within the 30-day period, after pleading to the merits, as such an objection is purely a matter of State concern and the decision of the State court thereon is controlling.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 582.

See Gypsum Placer Claims, In re, 37 L. D. 484, p. 488.

7. QUESTIONS FOR DETERMINATION BY COURTS.

a. POSSESSORY RIGHTS ONLY DETERMINED.

The subject of judicial determination is the disputed possessory right to ground embraced in conflicts in different claims only.

Grand Canyon R. Co. v. Cameron, 35 L. D. 495, p. 496.

See Richmond Min. Co. v. Rose, 114 U. S. 576, p. 584.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 300.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 357.

Powell v. Ferguson, 23 L. D. 173.

Snyder v. Waller, 25 L. D. 7.

Wright v. Town of Hartville, 13 Wyo. 497.

A suit by an adverse claimant determines only the right of possession between the rival claimants.

Higgins v. John Gold Min. Co., 14 C. L. O. 238.

See Branagan v. Dulaney, 2 L. D. 744, p. 750.

The determination of the right of possession as between claimants, is, upon the filing of such adverse claims, referred to a court of competent jurisdiction in aid of the Land Office, but the form of the action is not provided for by the statute.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

Perego v. Dodge, 163 U. S. 160, p. 165.

Gillis v. Downey, 85 Fed. 483, p. 487.

Durgan v. Redding, 103 Fed. 914, p. 917.

Woods v. Holden, 26 L. D. 198.

Woods v. Holden, 27 L. D. 375 (on review).

North Star Lode, In re, 28 L. D. 41, p. 43.

Cain v. Addenda Min. Co., 29 L. D. 62, p. 64.

Gillis v. Downey, 29 L. D. 83, p. 85.

Conway, In re, 29 L. D. 388, p. 390.

Ryan v. Granite Hill Min. & Dev. Co., 29 L. D. 522, p. 524.

Ritter, In re, 37 L. D. 715, p. 717.

Burke v. McDonald, 2 Idaho (310, p. 313) 339.

Mares v. Dillon, 30 Mont. 117, p. 139.

Deaney v. Mineral Creek Mill. Co., 11 N. Mex. 279, p. 288.

Iba v. Central Association, etc., 5 Wyo. 355, p. 360.

The object of a suit on an adverse claim is to establish the right to the possession of the premises in controversy and to stay proceedings upon an application for a patent until such right is adjudicated.

Providence Gold Min. Co. v. Burke, 6 Ariz. 323, p. 331.

Marshall Silver Min. Co. v. Kirtley, 12 Colo. 410, p. 416.

See Wight v. Dubois, 21 Fed. 693.

This section authorizes an adverse claimant to file his claim and bring suit in a proper court, and relegates to such court the jurisdiction to determine the right of possession between the adverse claimants.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 482.

An action pursuant to an adverse claim has for one of its objects the determination whether either party has divested the United States of the possessory title to the mining claim in dispute.

Strasburger v. Beecher, 44 Fed. 209, p. 214.

See Jackson v. Roby, 109 U. S. 440.

The intention is that suits upon adverse claims shall be directed to establishing the equitable rights of possession between the parties and the right to apply for a patent for the premises, and that the Government is not estopped by the decisions following the suit from inquiring into the validity or legality of the claim.

Becharts v. Sizer, In re, 12 C. L. O. 166, p. 167.

Parties may under this section litigate for determining the question of right of possession of a mining claim on public land in order that the proper officers may patent the claim to the party establishing the right thereto.

Giberson v. Wilson, 79 Ark. 581, p. 583.
Ware v. White, 81 Ark. 220, p. 223.

This section requires a suit to be brought in a court of competent jurisdiction, but contains no direct limitation as to the parties and is for the purpose of determining the question of the right of possession; and there is nothing to prevent a court from determining this right under the law of the locality or denying to either party a favorable judgment, unless one or the other establishes a valid and legal title under the mining laws and the local rules and customs of miners.

Nome-Sinook Co. v. Simpson, 1 Alaska 578, pp. 581, 582.
See Mason v. Washington-Butte Min. Co., 214 Fed. 32, p. 36.

Only controversies between adverse claimants under conflicting mining locations of the same land, which relate solely to the right of possession are committed exclusively to the court.

Bunker Hill, etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 147.
See Turner v. Sawyer, 150 U. S. 578, p. 587.

A location must be one which entitles the locator to possession against the United States as well as against all other persons.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.
Anthony v. Jillson, 83 Cal. 296, p. 300.

b. DETERMINATION BY COURT—PROOF BEFORE LAND DEPARTMENT.

This section relates only to the question of the right of possession of a mining claim as between the parties litigant and it remains in every case for the Land Department to determine all other questions touching the right to a patent.

Clipper Min. Co. v. Eli Min. & Land Co., 33 L. D. 660, p. 667.
Clipper Min. Co., v. Eli Min. & Land Co., 34 L. D. 401.

The determination of the controversy by the court determines the right of possession, but the applicant still must make the proof required by law to entitle him to the patent.

Alice Placer Mine, In re, 4 L. D. 314, p. 317.
Powell v. Ferguson, 23 L. D. 173.
Snyder v. Waller, 25 L. D. 7, p. 8.

The provisions of these sections relating to adverse claims contemplate proceedings to determine only the right of possession as between claimants of the same unpatented mineral lands and no authority of law exists for transferring the proceedings from the Land Department to a court for a decision on any other question.

Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 148.
See Ryan v. Granite Hill Min. & Dev. Co., 29 L. D. 522, p. 524.

The judgment of a court in proceedings on an adverse claim is to determine the question of the right of possession, and when it has determined this question its office is ended, but the right to a patent is not thereby established.

Clipper Min. Co. v. Eli Min. & Land Co. 33 L. D. 660, p. 668.
See Clipper Min. Co. v. Eli Min. & Land Co., 34 L. D. 401.

The validity of the title of an adverse claimant must be determined by a court of competent jurisdiction and not by the Land Office.

Batterton v. Douglas Min. Co., 20 Idaho 760, p. 764.

Whether an adverse claimant has the better legal right to the mining claim in controversy is a question for the determination of the court and can not be anticipated by the department.

Bell v. Aitken, 4 C. L. O. 66.
Ogg v. McDonald, 6 C. L. O. 188.

C. TITLE OF UNITED STATES NOT AFFECTED BY COURT'S DECISION.

An applicant for public lands can not have his right thereto as against the Government determined in an adverse suit.

Last Chance Min. Co. v. Tyler, 157 U. S. 683, p. 694.

Butte Land & Investment Co. v. Merriman, 32 Mont. 402, p. 411.

See *United States v. Jones*, 131 U. S. 1.

The decree of a court in an action authorized by this section determines simply as between the litigants which one has the superior right to the possession of the premises in dispute; and as the title to the land is in the Government such a decree does not affect the title, except in so far as the judgment of the court may be binding on or influence the Land Department.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 833.

See *Duffield v. San Francisco Chemical Co.*, 205 Fed. 480.

The title of the United States is not affected by the possessory action between the parties as contemplated in this section.

Alice Placer v. Addie Stevens & Lazy Bill Lodes, 3 Brainard Leg. Prec. 242, p. 246.

The question of the right of possession is to be determined by the courts, and the United States is not a party to the proceedings, but the only jurisdiction the court may have is of a controversy between individual claimants and the right of an applicant as against the Government can not be determined in such a suit.

Perego v. Dodge, 163 U. S. 160, p. 168.

See *Last Chance Min. Co. v. Tyler*, 157 U. S. 683, p. 694.

Clipper Min. Co. v. Eli Min. & Land Co., 33 L. D. 660, p. 667.

It is the question of the right of possession which is to be determined by the proceedings required to be had in a court of competent jurisdiction, and the United States is not required to be a party to the proceedings.

Perego v. Dodge, 163 U. S. 160, p. 168.

Bonner v. Meikle, 82 Fed. 697, p. 698.

D. VALIDITY OF ORIGINAL LOCATION.

All questions concerning the proper location and the maintenance of a prior location by the performance of the required labor must necessarily be left to the courts for adjudication; and a determination of this question by a court of competent jurisdiction is conclusive on the department as to the questions involved.

Branagan v. Dulaney, 2 L. D. 744, p. 749.

Alice Placer Mine, In re, 4 L. D. 314, p. 317.

In a contest as to the ownership of a mining claim the regularity and validity of the location are not in question where both parties derive title from the original owners.

Mining Co. v. Taylor, 100 U. S. 37, p. 40.

It is not competent to show by proof outside the receiver's receipts or the patents that there had been no location of the patented claims or no discovery of the lodes or veins therein before they were entered for patent, as this is the issue between the parties before the Land Department, and its decision on such question is conclusive and not subject to collateral attack.

Uinta Tunnel Min., etc., Co. v. Creede & Cripple Creek Min., etc., Co., 119 Fed. 164, p. 166.

See *Calhoun Gold Min. Co. v. Ajax Gold Min. Co.*, 182 U. S. 499, pp. 502, 503, 510.

Where there is a third location made subsequent to a junior location, such third locator may adverse the application for patent by such junior locator and show that such junior location is void for the reason that at the time it was made the ground was not open to location under the mineral laws of the United States.

Swanson v. Kettler, 17 Idaho 321, p. 338.

See *Book v. Justice, Min. Co.*, 58 Fed. 106.

McCulloch v. Murphy, 125 Fed. 147.

Zerres v. Vanina, 134 Fed. 610.

A third locator is permitted to offer proof tending to establish the existence of a valid and subsisting location anterior to that of the location which is being adversed.

Farrell v. Lockhart, 210 U. S. 142, p. 147.
 Modifying Lavagnino v. Uhlig, 198 U. S. 443.

A location and discovery on land already withdrawn from the public domain by a valid and subsisting mining claim is absolutely void for the purpose of founding a contradictory right.

Swanson v. Sears, 224 U. S. 180, p. 181.

Belk v. Meagher, 104 U. S. 279.

Gwillim v. Donnellan, 115 U. S. 45.

See Del Monte Min., etc., Co. v. Last Chance Min. Co., 171 U. S. 55.

Creede & Cripple Creek Min. Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337.

Clipper Min. Co. v. Eli Min. Co., 194 U. S. 220.

Brown v. Gurney, 201 U. S. 184.

Farrell v. Lockhart, 210 U. S. 142.

Overruling Lavagnino v. Uhlig, 198 U. S. 443.

Where a location monument and shaft of a mining claim have been included within the exterior boundaries of a patented claim, there can be no valid location of such claim as to the remaining vacant ground by filing an amended certificate, but any such attempted relocation must be regarded as a new and independent location, and no rights can attach thereto by virtue of the extinguished location of the original claim, and no rights can attach to such new and independent location by virtue of its being a part of the original but extinguished location.

Indiana-Nevada Min. Co. v. Gold Hills Min., etc., Co., 35 Nev. 158, p. 165.

This section describes lode claims as mining claims containing "veins or lodes of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits."

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 483.

A locator of a vein or lode within the limits of an attempted prior placer location may by an adverse claim and suit thereon have determined by a court of competent jurisdiction the validity of his lode location as against such attempted prior placer location.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 835.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 486.

See Belk v. Meagher, 104 U. S. 279.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.

Thallman v. Thomas, 111 Fed. 277.

Overruling Duffield v. San Francisco Chemical Co., 198 Fed. 942.

e. QUESTION OF DISCOVERY.

The question of discovery of mineral within the limits of a claim is one of the matters fundamental to the right of possession, and such questions are remitted to the proper court by the filing of an adverse claim.

Empy, In re, 10 C. L. O. 102, p. 103.

The question as to whether a discovery on which a mineral application rests is upon ground covered by a valid and subsisting prior location, must be settled by a court in proceedings instituted by the adverse claimant; and a proper court, and not the Land Department, is the tribunal authorized to hear and determine such questions.

Mutual Min., etc., Co. v. Currency Co., 27 L. D. 191, p. 193.

See Cook v. Johnson, 3 Alaska 506, p. 529.

Currency Min. Co. v. Bentley, 10 Colo. App. 271.

When the controversy is between two mineral claimants the rule as to the sufficiency of a discovery of mineral is more liberal than when the controversy is between a mineral claimant and one seeking to make an agricultural entry.

Chrisman v. Miller, 197 U. S. 313, p. 323.

An applicant for a patent for a mining claim who fails to answer charges of invalidity of his claim, and whose application is rejected because of a want of discovery, is not entitled to a repayment of the purchase price of the claim in the absence of showing an excusable neglect on his part.

Jefferson Lime Co., In re, 41 L. D. 238.

f. PERFORMANCE OF REPRESENTATION WORK.

When an application is made for a patent for a mining claim and an adverse claim is filed and proceedings instituted thereon, the applicant is not then required to file a certificate showing that the required amount of labor has been expended or improvements made upon the claim, as he must establish the validity of his claim in the proceedings instituted; but after the determination of the proceedings the applicant can not then be permitted to perform the representation work.

Willitt v. Baker, 133 Fed. 937, p. 949.

See Bay State Silver Min. Co. v. Brown, 21 Fed. 167.

Book v. Justice Min. Co., 58 Fed. 106.

McCulloch v. Murphy, 125 Fed. 147.

Whalen Consol. Copper Min. Co. v. Whalen, 127 Fed. 611.

The question as to the annual expenditure in labor or improvements is solely one between rival or adverse claimants to the same mineral land and goes only to the right of possession, and the determination of this question is committed to the courts by adverse proceedings and is not for the Land Department to determine.

Wolensberg, In re, 29 L. D. 302, p. 304.

Barklage v. Russell, 29 L. D. 401, p. 403.

Cleveland v. Eureka Gold Min., etc., Co., 31 L. D. 69, p. 71.

Gaffney v. Turner, 29 L. D. 470, p. 474.

If a locator remains in possession and fails to perform the assessment work his interest terminates, and the same result follows if he voluntarily abandons the possession.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 450.

Farrell v. Lockhart, 210 U. S. 142, p. 148.

A plaintiff in an adverse suit can not show a forfeiture of a mining claim by reason of the failure to do the assessment work for a particular year, where such plaintiff had no interest by reason of the fact that such location was void because made subsequent to another and covering the same area, and an adverse suit can not be converted into a mere protest against the showing of a patent by persons or parties having no interest and who could in no way be benefited by the judgment to be rendered.

Snowy Peak Min. Co. v. Tamarack & Chesapeake Min. Co., 17 Idaho 630, p. 636.

See Wight v. Dubois, 21 Fed. 693.

Milwaukee Gold Extraction Co. v. Gordon, 37 Mont. 209.

Lozar v. Neill, 37 Mont. 287.

Lockhart v. Farrell, 31 Utah 155.

g. RESUMPTION OF WORK.

In an action on an adverse claim under this section it is proper for the parties to stipulate as to the only issues to be tried, and the issue may be limited to the sole question as to whether or not the plaintiff resumed work on his claim after forfeiture and before the location under which the defendant claims title.

Giberson v. Wilson, 79 Ark. 581, p. 583.

h. QUESTION OF ABANDONMENT.

The question of abandonment is a proper one to try in a court under the provisions of this section if an adverse claim is made, and the Land Office can not require proof in a manner not contemplated by the statute.

Manhattan & San Juan Silver Min. Co., In re, 2 L. D. 698, p. 699.

An adverse claimant is permitted to show that at the time he made his location a senior location had actually been abandoned and the area of such senior location had thereby become a part of the public domain at the date of his junior location, and the ground was open to entry.

Swanson v. Kettler, 17 Idaho 321, p. 336.
See *Farrell v. Lockhart*, 210 U. S. 142.

The question of abandonment of a mining claim is a proper one to try in a court under the provision of this section where an adverse claim has been filed.

Manhattan v. San Juan Silver Min. Co., 2 L. D. 698.

The mere fact that a senior location had been made and that the statutory period for performing the annual assessment work had not expired when the second location was made would not conclusively establish that the location was a valid and subsisting one nor prevent the initiation of rights in the ground, by another locator if at the time of such location there had been an actual abandonment of the senior location.

Farrell v. Lockhart, 210 U. S. 142, p. 147.

i. QUESTION AS TO RELOCATION.

The Land Department has nothing to do with the question of an alleged relocation of a mining claim by reason of failure to perform the annual representation work, but this question is solely a matter between rival or adverse claimants and goes to the right of possession of the claim and is committed to the determination of the proper court.

Barklage v. Russell, 29 L. D. 401.
Gaffney v. Turner, 29 L. D. 470, p. 474.
Cleveland v. Eureka Gold Min., etc., Co., 31 L. D. 69, p. 71.

j. CHARACTER OF LAND IN CONTROVERSY.

In a suit between a placer and a lode locator on an adverse claim the court necessarily has jurisdiction to determine whether the mineral land in controversy is of a character which entitles it to be located as a placer claim, or whether it can be entered only as a lode mining claim, and the court is not prohibited from determining whether the land is subject to location in the mode and manner claimed by one or both of the parties; but the court does not determine what may be the binding force and effect of its judgment in that respect upon the Land Department.

San Francisco Chemical Co. v. Duffield, 201 Fed. 330, p. 334; approving *Webb v. American Asphaltum Min. Co.*, 157 Fed. 203.

Overruling in effect *Duffield v. San Francisco Chemical Co.*, 198 Fed. 942.
Approved in *Duffield v. San Francisco Chemical Co.*, 205 Fed. 480.

Neither the provisions of this section nor the preceding section contemplate proceedings to decide controversies respecting the character of lands in controversy, as to whether they are mineral lands or nonmineral, as their mineral character is a question which must be decided by the Land Department, and proceedings can not be transferred from the Land Department to the courts for the decision of that question.

Le Fevre v. Amonson, 11 Idaho 45, p. 48.
See *Ryan v. Granite Hill Min. & Dev. Co.*, 29 L. D. 522.

The determination by the Land Department as to the nature of the land included in the patent is conclusive, but whether the land conveyed was public land and subject to sale is subject to inquiry by the courts.

Mantle v. Noyes, 5 Mont. 274, p. 293.

k. UNDERGROUND RIGHTS.

When a controversy arises between the owners of two patented mining claims over the intersection or union of two veins below the surface the courts must determine

the rights of the parties, and the rights of the older location must prevail without regard to the dates of the patents.

Eureka Min. Co. v. Pioneer Consol. Min. Co., 8 C. L. O. 106.
Smuggler v. '78 Lode (unreported) cited in 8 C. L. O. 106.

As between owners of separate and intersecting veins, the ownership of the mineral contained within the space of intersection is determined according to the provisions of this section, and the rights of the different owners are determined by its provisions.

Stinchfield v. Gillis, 96 Cal. 33, p. 35.

I. WAIVER OR RELINQUISHMENT.

On the institution of a suit by an adverse claimant, all questions relating to conflicting rights must be determined by the court, and this includes the question as to whether a waiver or relinquishment is in proper form and sufficient in law.

St. Lawrence Min. Co. v. Albion, 10 C. L. O. 51.
See Sacramento v. Last Chance No. 2 Min. Co., 3 C. L. O. 66.
Mt. Pleasant Mine, In re, Copp's Min. Lands 204.

A relinquishment which protects one party claiming adversely to an applicant protects the other party from all harm to his interest by reason of the proceedings for patent, and one party can not repose any safety under it if another could elect to disregard it and proceed under this section to secure the judgment in his favor which would bind all parties as to the ground relinquished.

Shields v. Simington, 27 L. D. 369, p. 372.

III. PROOF OF CUSTOMS.

In a contest as to the ownership of a mining claim it is proper to prove a custom in the mining district allowing the discoverer of mineral bearing claims 20 days after his discovery in which to complete his location.

Doe v. Waterloo Min. Co., 70 Fed. 455, p. 459.

D. PRESUMPTIONS INDULGED BY COURTS.

In an application for patent by a junior locator it will be presumed that there was no senior location, in the absence of an adverse claim, and that at the time the junior location was made the ground was open to entry under the mineral laws of the United States.

Swanson v. Kettler, 17 Idaho, 321, p. 338.

A court on the trial of the rights to conflicting claims will not presume that the Land Office determined the course of the vein or lode, and the marking of an ideal line across the survey and diagram does not have the effect of putting a lode into the ground if there was no vein there.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 552.

8. DILIGENCE IN PROSECUTIONS OF PROCEEDINGS.

The question as to whether or not an adverse claimant has exercised reasonable diligence in prosecuting a suit to final judgment is for determination by the court in which the suit is pending, and the question can not be determined by the Land Department.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 584.
Davis v. McDonald, 33 L. D. 641, p. 642.
Rose v. Richmond Min. Co., 17 Nev. 25, p. 61.
Deeney v. Mineral Creek Mill. Co., 11 N. Mex. 279, p. 294.
Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 108.
See Chambers v. Pitts, 3 C. L. O. 162.

The question of diligence in the prosecution of a pending suit is a question for the determination of the court and one which must be left for its determination after it has acquired jurisdiction, and is not a question for the department; and the proper practice is for the defendant to move to dismiss the case for want of prosecution, and if the motion is sustained, to present a certified copy of the judgment; and a patent can then issue.

Iowa Min. Co., v. Bonanza Min. Co., 6 C. L. O. 75.
Morrison v. Lincoln Min. Co., 6 C. L. O. 105.

This section provides that on failure on the part of an adverse claimant to prosecute his suit to judgment with reasonable diligence, his claim will be waived; but it does not provide even by implication that the department shall decide what constitutes reasonable diligence while a suit is pending in court.

Iowa Min. Co., v. Bonanza Min. Co., 6 C. L. O. 75.
Morrison v. Lincoln Min. Co., 6 C. L. O. 105.

An adverse claimant must prosecute his claim in a court with reasonable diligence under penalty of waiver, and the same reasonable diligence is required in applications pending before a district officer.

Seaton Min. Co. v. Davis, Copp Min. Lands 296, p. 298.

A right of possession awarded under a judgment pursuant to this section in a suit involving a location of any character, even such a possessory right as would be found to be effective for all purposes, may thereafter be void where upon the termination of the litigation the successful party fails or neglects to secure patent under his judgment roll, and in such case new patent proceedings become the only remaining recourse, and then the unsuccessful litigant in the former proceedings may file his new application, against which his former adversary must impose an adverse claim and support it by a suit in court, or a waiver of his adverse claim will result.

Clipper Min. Co. v. Eli Min. & Land Co., 34 L. D. 401, p. 407.

A proceeding instituted on an adverse claim must be prosecuted with reasonable diligence to final judgment and a court may, on an unexplained delay for more than 12 years, dismiss the proceedings.

Lee Doon v. Tesh, 131 Cal. 406, p. 410.

The effect of a judgment obtained in proceedings authorized by this section may be waived and all right to a patent acquired under such judgment may be lost by long delay, or by failure to perform the annual expenditure, and the judgment after such delay will afford a placer claimant no immunity from a subsequent relocation of the claim and the consequent loss of the right of possession by failure to make the requisite annual expenditure, where the claimant failed to resume work before a relocation.

Reins v. Montana Copper Co., 29 L. D. 461, p. 464.

A contestant must prove the filing of his adverse claim in the Land Office and the institution of his suit in proper time.

Deeney v. Mineral Creek Milling Co., 11 N. Mex. 279, p. 288.
 See *Mattingly v. Lewisohn*, 8 Mont. 259.

9. STAY OF PROCEEDINGS IN LAND OFFICE.

Under this section on the filing of an adverse claim all proceedings, except the publication of notice and making and filing the affidavit thereof, shall be stayed until the controversy is decided by a court of competent jurisdiction or the adverse claim is waived, as all functions of the Land Department are suspended by the commencement of such action and the decision of the court is controlling upon the officers of the Land Department.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 585.
Gwillim v. Donnellan, 115 U. S. 45, p. 49.

- Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 167 U. S. 108, p. 115.
 McEvoy v. Hyman, 25 Fed. 539, p. 540.
 Enterprise Min. Co. v. Rico-Aspen, etc., Min. Co., 66 Fed. 200, p. 208.
 Gillis v. Downey, 85 Fed. 483, p. 487.
 Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min. Co., 109 Fed. 538, p. 542.
 Mackay v. Fox, 121 Fed. 487, p. 491.
 Tonopah Fraction Min. Co. v. Douglass, 123 Fed. 936, p. 939.
 Iola Lode Case, In re, 1 L. D. 539.
 Iron Silver Min. Co. v. Mike & Starr Min. Co., 6 L. D. 533, p. 534.
 Ground Hog Lode v. Parole & Morning Star, 8 L. D. 430, p. 431.
 Northwestern Lode & Mill Site Co., In re, 8 L. D. 437, p. 438.
 Smith, In re, 10 L. D. 184, p. 186.
 Brown v. Bond, 11 L. D. 150, p. 151.
 Bay State Gold Min. Co. v. Trevillion, 10 L. D. 194, p. 195.
 Pike's Peak Lode, In re, 10 L. D. 200, p. 205.
 Swaim v. Craven, 12 L. D. 294, p. 295.
 Scott v. Maloney, 22 L. D. 274, p. 275.
 Clipper Min. Co., In re, 22 L. D. 527, p. 528.
 Thomas v. Elling, 25 L. D. 495, p. 496.
 Woods v. Holden, 26 L. D. 198, p. 200.
 Thomas v. Elling, 26 L. D. 220.
 Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 208.
 Long John Lode Claim, In re, 30 L. D. 298, p. 300.
 Harkrader v. Goldstein, 31 L. D. 87, p. 89.
 Southern Cross Gold Min. Co., v. Sexton, 31 L. D. 415, p. 416.
 Davis v. McDonald, 33 L. D. 641, p. 642.
 Eldred v. Lasey, 6 C. L. O. 34.
 Smith, In re, 7 L. D. 415.
 Phosphate Deposits, In re, 17 C. L. O. 74, p. 75.
 Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 108.
 Iba v. Central Association, etc., 5 Wyo. 355, p. 360.
 Slothower v. Hunter, 15 Wyo. 189, p. 198.
 See Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 693.
 Young v. Goldsteen, 97 Fed. 303.
 Hagland, In re, 1 L. D. 591, p. 593.
 Reed v. Hoyt, 1 L. D. 603.
 Ovens v. Stephens, 2 L. D. 699.
 McMaster, In re, 2 L. D. 706.
 Miner v. Mariott, 2 L. D. 709.
 Jamie Lee Lode v. Little Forepaugh Lode, 11 L. D. 391.
 Stranger Lode, In re, 28 L. D. 321, p. 327.
 Greater Gold Belt Min. Co., In re, 28 L. D. 398, p. 399.
 Wright v. Town of Hartville, 13 Wyo. 497, p. 502.

When an adverse claim is filed and has acquired a status in the courts, the question of its regularity and validity should be left to the determination of the court, and action on the application by the department should be suspended.

- Brown v. Bond, 11 L. D. 150, p. 154.
 Brettell v. McMaster, 10 C. L. O. 306.
 See McMaster, In re, 2 L. D. 706.

On the filing of an adverse claim the register and receiver may properly enter an order suspending all further proceedings on the application for patent and require the adverse claimant to commence an action in a court of competent jurisdiction to settle the controversy.

- Bernard v. Parmelee, 6 Cal. App. 537, p. 539.

When an adverse claim is filed and the subject matter of the controversy transferred to a court of competent jurisdiction, all further proceedings in the Land Office are stayed with the single exception of the publication of notice and making and filing proof thereof; and a filing of a new application for land in conflict must not be received until the controversy is settled by the court.

- Great Eastern Min. Co. v. Esmeralda Min. Co., 2 L. D. 704.

Proceedings in the Land Department must be stayed where an adverse claim is filed and suit is begun thereon within the statutory period, and it is the duty of the plaintiff and it is to his interest to advise the Land Department by official proof that he has properly commenced suit; and on the other hand, it is the defendant's duty to prove that no suit had been commenced before making entry, but a failure to give notice of the commencement of the suit can not work a forfeiture of the right of such adverse claimant.

Hewitt, *In re*, Copp's Min. Lands 235.

The provisions of this section to the effect that all proceedings except the publication of notice and the making and filing of the affidavit thereof shall be stayed until the controversy is settled in court were not in terms carried into the Alaska adverse claim statutes.

Low v. Katalla Co., 40 L. D. 534, p. 538.

Where an action is pending in a court of competent jurisdiction for the same purpose as the action contemplated in this section it is not necessary for an adverse claimant to commence another action within the statutory period, but a showing of the pending action is sufficient to suspend the proceedings.

Northwestern Lode & Mill Site Co., *In re*, 8 L. D. 437, p. 438.

An entry for a mining claim can not be allowed while a suit of an adverse claimant is pending and undetermined in the proper court, and while the adverse claim has in no way been waived.

Meyer v. Hyman, 7 L. D. 83, p. 84.

Brown v. Bond, 11 L. D. 150, p. 151.

A certificate of the clerk of the court under seal in which an adverse claimant has begun suit will be sufficient authority for the stay of proceedings provided for in this section.

Adverse claims, *In re*, Copp's Min. Lands 272.

An unaccepted tender of payment for a placer location pending proceedings in a State court, instituted by an adverse claimant, does not make the right of a placer claimant to patent complete, and the right may be waived by subsequent laches.

Reins v. Montana Copper Co., 29 L. D. 461, p. 465.

The proceedings which are by law required to be suspended pending suit on an adverse claim are those relating to the patenting of the claim, and the Land Office is not barred by the filing of an adverse claim from investigating the collateral fact as to whether the application embraces land not subject to the same.

St. Lawrence Min. Co. v. Albion Min. Co., 10 C. L. O. 51, p. 52.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 50.

10. WHAT PROCEEDINGS ARE NOT STAYED.

The fact that an adverse claim was filed and proceedings subsequently commenced in the proper court does not prevent the Land Department from deciding the question of the regularity of the action of a local office in receiving applications from the adverse claimant and dismissing from the record papers improperly filed.

Great Eastern Min. Co. v. Esmeralda Min. Co., 2 L. D. 704, p. 705.

While the Land Department may in its discretion suspend proceedings on an application for a patent to a mining claim pending the determination of a suit, though such suit is not based strictly upon an adverse claim, yet ordinarily it should not exercise this power unless an adjudication by the court of the questions involved in the suit would aid in the disposal of a protest filed in the Land Department against the application.

Selma Oil Claim, *In re*, 33 L. D. 187, p. 189.

See Thomas v. Elling, 28 L. D. 220.

The pendency of a suit not based on an adverse claim and not brought within the time limit by this statute is without effect to stay proceedings in the Land Department.

Bunker Hill, etc., Min., etc., Co. v. Shoshone Min. Co., 33 L. D. 142, p. 145.

The allowance of an entry while an adverse suit is pending is not such an irregularity as to warrant the cancellation of the entry, where the adverse suit is subsequently dismissed.

Mutual Min., etc., Co. v. Currency Co., 27 L. D. 191, p. 194.

Where an action commenced by an adverse claimant is pending the officers of the Land Department can not assume from mere delay in placing the cause upon the trial calendar or taking proceedings therein that the adverse claim had been waived.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 583.

While this section may not apply to an action instituted by the original applicant against a subsequent applicant involving the same mineral land, yet in such case the department should stay the proceedings on the application until the final determination of the action.

Little Giant Lode, In re, 22 L. D. 629, p. 630.

Little Giant Lode, In re, 29 L. D. 194.

11. FAILURE TO COMMENCE PROCEEDINGS WITHIN STATUTORY TIME— EFFECT.

A failure to institute proceedings in the proper court by the adverse claimant is a waiver of his adverse claim.

Mason v. Washington-Butte Min. Co., 214, Fed. 32, p. 35.

Southwestern Min. Co. v. Gettysburg Lode Claim, 4 L. D. 120, pp. 271-273.

Petit v. Buffalo Gold, etc., Min. Co., 9 L. D. 563, p. 565.

Dufresne v. Northern Light Min. Co., 2 Alaska 592, p. 596.

A failure to commence proceedings in the proper court within 30 days after the filing of an adverse claim is a waiver of the claim, and the stay of the proceedings affected by the filing of an adverse claim within such period continues only until the controversy is settled by the courts, or the adverse claim is waived, and these provisions are mandatory.

Madison Placer Claim, In re, 35 L. D. 551, p. 552.

See Steves v. Carson, 42 Fed. 821.

The fact that a claimant may be beyond the seas, or under legal disability, or may fail to act from inadvertence or other cause will not excuse as the suit must be brought within the statutory period.

Steves v. Carson, 42 Fed. 821.

Where a suit is not entered on an adverse claim within the prescribed time, such claim is by force of the statute waived and is no longer effective to stay the patent proceedings, and this waiver becomes effective immediately upon the expiration of the 30th day, and any proceedings thereafter upon the adverse claim are without authority of law and can not affect the rights of the applicant for a patent.

Madison Placer Claim, In re, 35 L. D. 551, p. 552.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584, p. 587.

Downey v. Rogers, 2 L. D. 707, p. 708.

McGarrahan v. New Idria Min. Co., 3 L. D. 422, p. 423.

Scott v. Maloney, 22 L. D. 274, p. 275.

Corning Tunnel Co. v. Pell, 4 Colo. 507.

See Lucy B. Hussey Lode, In re, 5 L. D. 93.

Boston Hydraulic Gold Min. Co. v. Eagle Copper, etc., Min. Co., Sickels' Min. L. & D. 320.

Cerro Bonito Quicksilver Mines, In re, 4 C. L. O. 3.

An adverse claim may be waived either by a transfer by the adverse party of his interest or by a failure to begin the proceedings within 30 days, or by an admission of record that the adverse party abandons his case or waives the claim.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 585.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 182.

See Madison Placer Claim, In re, 35 L. D. 551, p. 552.

Proceedings not instituted in court by an adverse claimant within the statutory period present no reason for a stay of the application for a patent for a mining claim.

Louisville Gold Min. Co. v. Hayman Min. & Tunnel Co., 33 L. D. 680.

Where a suit is not commenced within the time required the application will be taken up for final action in its regular order as though no adverse claim had been filed.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 184.

Wood v. Hyde, 1 C. L. O. 166.

Morse v. Streeter, Sickels' Min. L. & D. 190.

Where an adverse claimant fails to begin his proceedings in the proper court within the prescribed period, a mineral entry may be allowed in favor of the applicant.

Catron v. Lewisohn, 23 L. D. 20, p. 23.

12. SUIT COMMENCED AFTER EXPIRATION OF TIME—EFFECT AND RIGHTS.

A suit on an adverse claim commenced after the expiration of the period of publication can not be recognized as a bar to the application for patent.

Mt. Pleasant Mine, In re, 3 C. L. O. 194.

Schoellkopf, In re, 4 C. L. O. 34.

Morse v. Streeter, Copp's Min. Dec. 127.

Boston Hydraulic Min. Co. v. Eagle Copper, etc., Min. Co., Sickels' Min. L. & D. 320.

After an entry is allowed, the commencement of a suit to test the right of possession can not operate to suspend proceedings for patent.

Lowe, In re, 9 C. L. O. 192.

An adverse claimant who fails to begin suit on his adverse claim until after the expiration of the period of publication, occupies the position of a protestant only.

Boston Quicksilver Mine, In re, 4 C. L. O. 34.

This section applies to a tunnel owner who files an adverse claim and fails to begin suit as required, and he must then occupy the position of a protestant only.

Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co., 1 L. D. 584.

An adverse claim on which suit is not commenced within 30 days can be treated only as a protest.

Tioga Consol. Min. Co., In re, 8 C. L. O. 88.

13. TERMINATION OF PROCEEDINGS.

a. BY DISMISSAL.

An adverse claimant who commences his action within the statutory period and voluntarily discontinues the same can not ask for any further suspension of the patent proceedings.

Wood v. Hyde, 1 C. L. O. 66.

The dismissal of proceedings brought by an adverse claimant is a waiver of all adverse rights and interests.

Whitman v. Haltenhoff, 19 L. D. 245, p. 247.

The dismissal of an adverse claim for any cause by the local officers can not excuse a delay beyond the statutory period in which such adverse claimant must begin proceedings in a competent court.

Scott v. Maloney, 22 L. D. 274, p. 275.

Where separate actions are brought by the coowners of an adverse claim in their own names in different courts a dismissal of one suit will not authorize the department to proceed with the application and allow the entry.

Black Queen Lode v. Excelsior No. 1 Lode, 22 L. D. 343, p. 344.

Where one of several partners, adverse claimants, orders the proceedings dismissed, all of the partners are estopped from controverting his authority after a delay of more than 8 years and where the lode or vein was worked by the locator during all of that time and where it appears that the partners knew of such dismissal.

United States v. Marshall Silver Min. Co., 129 U. S. 579, pp. 584, 586.

Where an applicant for a patent for a mining claim presents a certificate from the clerk of a court in which a suit had been brought by an adverse claimant, as required by the statute, to the effect that there was then no suit pending in such court, an entry allowed by the land officers will be set aside on a showing by the adverse claimant that the pending suit was dismissed without his authority and even without his knowledge.

Meyer v. Hyman, 7 L. D. 83.

b. OTHER METHODS OF TERMINATION.

Under this statute an adverse claim against an application for a mining location may be terminated either by a settlement between the parties, by a judgment of the court, or by a waiver of the adverse claim, and under the decisions there are several ways in which an adverse claim can be waived while the case is pending without invading the jurisdiction of the court.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 585.

Mackay v. Fox, 121 Fed. 487, p. 491.

St. Lawrence Min. Co. v. Albion Consol. Gold Min. Co., 4 L. D. 117, p. 119.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 182.

See Albion Consol. Min.Co., In re, 4 L. D. 376.

Where adverses involving a common conflict are filed and prosecuted the fact is necessarily shown by the records of the local office, and all parties in interest are charged with notice thereof, and each adverse claimant must have all his rights determined not alone against the applicant for patent but also against all other adverse claimants; and until this is done the controversy is not settled within the contemplation of this section.

Woods v. Holden, 26 L. D. 198, p. 201.

Woods v. Holden, 27 L. D. 375 (On review).

On the termination of an adverse suit, the official plat and field notes together with the judgment roll and any other papers should be returned to the surveyor general that the proper amendment may be made on the face of the plat and then certified by that officer.

Donlan, In re, 39 L. D. 353, p. 355.

14. QUESTIONS NOT WITHIN COURT'S JURISDICTION.

This section provides a method by which a court is to determine the right of possession between two or more mining claimants and not the character of the land, and it gives a court jurisdiction of a suit when the parties are all mining claimants and the lands embraced in the claim are unpatented Government land; but a court has

no jurisdiction of a suit in support of an adverse claim either where the parties are mining claimants and a patent has already been issued to one, or where one of the parties is a mining claimant and the other a town-site claimant, whether patent has been issued or not, or generally where one of the parties is an applicant for mineral lands and other claims the same or any part thereof under any of the laws providing for the disposal of nonmineral lands.

Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 148.

See *Le Fevre v. Amonson*, 11 Idaho 45.

Wright v. Town of Hartville, 13 Wyo. 497.

A court has no jurisdiction under this section in a suit on an adverse claim where one of the parties is an applicant for patent to a mining claim and the other party claims the same or any part thereof under any of the laws providing for the disposal of nonmineral lands, including a town-site claimant either before or after patent is issued.

Wright v. Town of Hartville, 13 Wyo. 497, p. 522.

See *Ryan v. Granite Hill Min. & Dev. Co.*, 29 L. D. 522.

The rights of conflicting claimants under this section depend upon the fact of actual intersection of the veins and priority of location and these are matters which it is in the province of a judicial tribunal to determine; but where mining locations cross each other and a contest may arise in the future, the rights of neither of the parties in interest should be prejudiced prior to a judicial determination thereof by the insertion of unnecessary matters in the patent.

Adelaide Consol. Silver Min., etc., Co., v. Gallagher, 6 C. L. O. 73, p. 74.

The ordinary mining suit where the rights of the parties against each other are alone to be considered does not properly arise under this section.

Conway v. Hart, 129 Cal. 480, p. 488.

This section is not intended to affect a party who before the publication first required has himself gone through all the regular proceedings required to obtain a patent for mineral land and who has received his patent.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 298.

Wright v. Town of Hartville, 13 Wyo. 497, p. 506.

See *Young v. Goldstein*, 97 Fed. 303, p. 306.

North Star Lode, In re, 28 L. D. 41, p. 43.

15. PLEADING AND PRACTICE.

A. CLAIMS MUST BE ASSERTED BY PROPER PLEADING.

Many questions may be litigated in an adverse suit but they can only be litigated when they are set up in some appropriate pleading.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 691.

The rule that a junior applicant for a patent for a mining claim can not include in his application any land embraced in a prior application is justified in the provisions of this section providing for the assertion of rights by a rival claimant by a timely presentation of an adverse claim and the institution of a suit in court for the determination of conflicting rights, and thus prevents confusion and error resulting from the accumulation of applications.

Stemmons v. Hees, 32 L. D. 220, p. 222.

Actions under this section to determine the right to the possession of a mining claim must be instituted according to the forms and practice within the jurisdiction where the suit is commenced.

Wolverton v. Nichols, 5 Mont. 89, p. 90.

Where a plaintiff in an action on an adverse claim fails to prove the facts necessary to make a prima facie case it entitles the defendant to a nonsuit as to plaintiff's cause of action, and the defendant if he sees fit is not required to introduce any evidence; and in such a case the court may nonsuit the plaintiff.

Kirk v. Meldrum, 28 Colo. 453, p. 459.

McWilliams v. Winslow, 34 Colo. 341, p. 344.

b. SUFFICIENCY OF COMPLAINT.

In an action by an adverse claimant under this section the complaint or bill should show affirmatively whether the ground in controversy is a lode or a placer claim.

Yellow Aster Min., etc., Co. v. Winchell, 95 Fed. 213, p. 214.

A locator of a mining claim of which he is in actual possession as such, may adverse an application for a patent for a part of such claim as a mill site, and a complaint stating the fact of the location and his continued possession states a cause of action in the proceedings required by the statute.

Durgan v. Redding, 103 Fed. 914, p. 917.

A complaint in an action under this section to contest an application for mining land must show that the plaintiff has filed his adverse claim within the period prescribed by section 2325 R. S., and brought his action within the time allowed by this section.

Cronin v. Bear Creek Gold Min. Co., 3 Idaho 614, p. 617.

Hopkins v. Butte Copper Co., 29 L. D. 390, p. 392.

See *Woods v. Sawtelle*, 46 Cal. 387, p. 389.

Cadierque v. Duran, 49 Cal. 356.

Anthony v. Jillson, 83 Cal. 296.

Wolverton v. Nichols, 5 Mont. 89.

Garfield Min., etc., Co. v. Hammer, 6 Mont. 53.

Milligan v. Savery, 6 Mont. 129.

Mattingly v. Lewisohn, 8 Mont. 259.

McKay v. McDougal, 19 Mont. 488.

Murray v. Polglase, 23 Mont. 401.

Woody v. Hinds, 30 Mont. 189, p. 191.

In a complaint on an adverse claim in an action in a State court it is not necessary to allege that such adverse claim was filed in the Land Office within the publication period of 60 days as required by section 2326.

Hain v. Mattes, 34 Colo. 345, p. 346.

See *Pennsylvania Min. Co. v. Bales*, 18 Colo. App. 106.

Rawlins v. Casey, 19 Colo. App. 152.

A complaint in a State court may be sufficient to quiet title to a mining claim without reference to a contest between parties seeking to obtain a patent under this and the preceding section.

Cronin v. Bear Creek Gold Min. Co., 3 Idaho 614, p. 618.

An adverse claimant in an action under this section in a State court is not required to aver in his complaint that an action was brought in respect to the property mentioned in a certain adverse claim.

Hoffman v. Beecher, 12 Mont. 489, p. 495.

See *Hammer v. Garfield Min., etc., Co.*, 130 U. S. 291.

The local statute of Nevada (section 1674) does not make the filing of a protest or of an adverse claim a jurisdictional fact to be alleged in a complaint.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 53.

See *Berry v. Camet*, 44 Cal. 334.

Where an action is pending in a State court to obtain possession of mining ground or to settle a controversy as to the title, and where the defendant afterwards makes application for patent, the plaintiff may by supplemental complaint base the existing

action upon the rights granted by this section and have the controversy determined accordingly.

Jones v. Pacific Dredging Co., 9 Idaho 186, p. 190.
 See Axiom Min. Co. v. Little, 6 S. Dak. 438.
 Memphis & Little Rock R. Co., In re, 8 L. D. 427.
 Hildt, In re, 28 L. D. 194.

Under this statute it is not necessary for a plaintiff in the action contemplated to set out specifically the character of his own title or the alleged title of the defendant, but it is sufficient simply to allege that the plaintiff is the owner and in possession of the described property, and that the defendants are unlawfully asserting a claim thereto adverse to him.

Tonopah Fraction Min. Co. v. Douglass, 123 Fed. 936, p. 940.
 Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240, p. 248.
 Scorpion Silver Min. Co. v. Marsano, 10 Nev. 370.
 Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, pp. 320, 321.
 Rose v. Richmond Min. Co., 17 Nev. 25, pp. 51-54.
 Steel v. Gold Lead Min. Co., 18 Nev. 80, p. 87.
 Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 112.
 See Campbell v. Taylor, 3 Utah 325.

In an action on an adverse claim under this section, an allegation by the plaintiff that an adverse claim, in due time and form, showing its nature, boundaries, and extent, was filed in the Land Office is traversable and is necessary to confer jurisdiction upon the court to decide the controversy.

Lily Min. Co. v. Kellogg, 27 Utah 111, p. 114.
 See Mont Blanc, etc., Min. Co. v. Debour, 61 Cal. 364.

An action brought under this section in the absence of a showing of the filing of an adverse claim and a staying of the patent proceedings, must proceed as an ordinary action to quiet title or to determine an adverse claim under the State statute.

O'Hanlon v. Ruby Gulch Min. Co. (Mont.) 135 Pac. 913, p. 915.

In an action on an adverse claim the complainant need not allege that the action is in reference to the ground stated in such adverse claim.

Hoffman v. Beecher, 12 Mont. 489, p. 499.
 See Hammer v. Garfield Min., etc., Co., 130 U. S. 291, p. 293.
 Garfield Min., etc., Co. v. Hammer, 6 Mont. 53.

C. CITIZENSHIP—PLEADING AND PROOF.

A court must find on the question of citizenship in an action on an adverse claim.

Rosenthal v. Ives, 2 Idaho (244), 265, p. 270.
 Burke v. McDonald, 2 Idaho (646, p. 650), 679.
 See North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.
 Iba v. Central Association, etc., 5 Wyo. 355, p. 376.

It is not necessary, where it is admitted by the pleadings, to prove the filing of an adverse claim in the Land Office; but citizenship must be proved, and it constitutes an absolute qualification to the holding of a mineral claim.

Iba v. Central Association, etc., 5 Wyo. 355, p. 376.
 See Rosenthal v. Ives, 2 Idaho (244) 265.
 Burke v. McDonald, 2 Idaho (646) 679.

In a suit brought under this statute the Government, though not a party, requires that certain facts must be found whether alleged in the pleadings or not, and one of these is that the applicant for a patent must prove himself to be a citizen of the United States, as citizenship is an absolute qualification to the holding of mineral lands.

Tonopah Fraction Min. Co. v. Douglass, 123 Fed. 936, p. 941.
 Burke v. McDonald, 2 Idaho (646, p. 650) 679.
 See Iba v. Central Association, etc., 5 Wyo. 355, p. 376.

A complaint in an action under this section for the possession of a mining claim must aver, and the proof must show, that the plaintiff is a citizen of the United States or has declared his intention to become such, to entitle him to recover.

- Lee Doon v. Tesh, 68 Cal. 43, p. 51.
 Anthony v. Jillson, 83 Cal. 296, p. 299.
 Jackson v. Dines, 13 Colo. 90, p. 93.
 Sherlock v. Leighton, 9 Wyo. 297, p. 309.
 See North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.
 Strickley v. Hill, 22 Utah 257, p. 269.

An adverse claim may be filed and a suit may be instituted thereon for the purpose of determining the citizenship of the defendant and thereby determine the validity of the original location.

- Sherlock v. Leighton, 9 Wyo. 297, p. 301.

The objection of alienage may be made by anyone adversely interested, and if made at the proper time, when a party is seeking to procure the title to mining property from the United States, it will prevent the acquirement of title.

- O'Reilly v. Campbell, 116 U. S. 418.
 Billings v. Aspen Min., etc., Co., 51 Fed. 338.
 Lohman v. Helmer, 104 Fed. 178, p. 181.

Under this section in all actions in relation to mining claims it is not necessary for the plaintiff to aver his citizenship.

- Lohman v. Helmer, 104 Fed. 178, p. 180.
 See Lee Doon v. Tesh, 68 Cal. 43.

The objection of alienage may be interposed in a suit on an adverse claim, but the naturalization of the alien applicant for patent before judgment cures the infirmity.

- Sherlock v. Leighton, 9 Wyo. 297, p. 312.
 See Manuel v. Wulff, 152 U. S. 505.

Proof of citizenship in a suit on an adverse claim is required to enable a party to recover a judgment in his own favor.

- Sherlock v. Leighton, 9 Wyo. 297, p. 309.
 See Lee Doon v. Tesh, 68 Cal. 43.
 Keller v. Trueman, 15 Colo. 143.
 McFeters v. Pierson, 15 Colo. 201, p. 207.
 Rosenthal v. Ives, 2 Idaho (244) 265.
 O'Reilly v. Campbell, 116 U. S. 418.
 Thomas v. Chisholm, 13 Colo. 105.

The absence of proof of citizenship in a suit on an adverse claim may prevent a recovery by one party, but it does not authorize for that reason alone a judgment in favor of the other parties.

- Sherlock v. Leighton, 9 Wyo. 297, p. 309.
 See Manuel v. Wulff, 152 U. S. 505.
 Billings v. Aspen Min., etc., Co., 52 Fed. 250.
 McCarthy v. Speed, 11 S. Dak. 362.
 Iba v. Central Association, etc., 5 Wyo. 355.

d. INTERVENTION BY INTERESTED PERSONS.

An adverse claimant who filed his claim and brought suit as required by this section can not object to an intervention by an interested party on the ground that the party intervening had filed no adverse claim.

- Nome-Sinook Co. v. Simpson, 1 Alaska 578, p. 580.

e. DEFENSE—SUFFICIENCY OF ANSWER.

In an action to quiet title to a mining claim where the court has jurisdiction to determine the controversy between the parties representing a mine and the ore therein, it is the duty of the defendant to set up all defenses to the plaintiff's claim, and having

failed to do so it is debarred from interposing a defense then held in a subsequent action, and the judgment in the former case estops the defendant as to every ground of recovery or defense which was, or might have been, presented.

Chemurg Min. Co. v. Hanley, 11 Idaho 302, p. 309.
See Empire State, etc., Min., etc., Co. v. Hanley, 136 Fed. 99.

In adverse proceedings an answer is sufficient where its denial is as broad as the averment in the complaint, and the date of the first location of the mine as claimed in the plaintiff's complaint is wholly immaterial, as the plaintiff on the trial is put upon proof of title and right of possession and the defendant is equally put upon proof of his title, and he can ask a decree in his favor.

Bay State Silver Min. Co. v. Brown, 21 Fed. 167, p. 168.

In a suit on an adverse claim an answer is sufficient which states facts which seem to entitle the defendant to affirmative relief under this section.

Perego v. Dodge, 9 Utah 3, p. 7.
See Wolverton v. Nichols, 119 U. S. 485.

The defendant, in an action brought by an adverse claimant for a judicial determination of the right to the possession of a mining claim, must prove that he has performed the assessment work for each year as required by the statute.

Willitt v. Baker, 133 Fed. 937, p. 949.

In a suit to support an adverse claim a defendant may show that the plaintiff's location was made upon grounds embraced upon a prior valid, subsisting location.

Hoban v. Boyer, 37 Colo. 185, p. 186.
See Gwillim v. Donnellan, 115 U. S. 45, p. 50.
Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.
Armstrong v. Lower, 8 Colo. 393.
Calhoun Gold Min. Co. v. Ajax, etc., Min. Co., 27 Colo. 1.

16. RECOVERY—PROOF.

a. RIGHT TO RECOVER—PROOF OF TITLE—BURDEN.

An adverse claimant must recover on the strength of his own title and not on the weakness of his adversary's.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.
Ritter, In re, 37 L. D. 715, p. 716.
Keppler v. Becker, 9 Ariz. 234, p. 239.
Allyn v. Schultz, 5 Ariz. 152, p. 161.

To entitle an adverse claimant to judgment he must show that his location is one which entitles him to possession against the United States as well as against the defendant, as it must be valid against the one as well as against the other.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.
Tonopah & Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. 408, p. 414.
Kendall v. San Juan, etc., Min. Co., 9 Colo. 349, p. 357.

In an adverse proceeding the better title must prevail and judgment must be for the party establishing such better title.

Bay State Silver Min. Co. v. Brown, 21 Fed. 167, p. 168.

An adverse claimant, to entitle him to recover, has the burden of showing that he is the owner of a valid and subsisting location of the claim in dispute and that his right is superior to that of the defendant.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.
Manning v. Strehlow, 11 Colo. 451, p. 454.

The burden of proof is on the adverse claimant to establish a possessory title in himself good as against the world.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.
Kendall v. San Juan, etc., Min. Co., 9 Colo. 349, p. 357.

The contestant in a suit on an adverse claim must show every fact which would entitle him to a patent except those acts necessary to initiate and prosecute an application for patent in the Land Office.

Deene v. Mineral Creek Mill. Co., 11 N. Mex. 279, p. 287.
See *Schultz v. Allyn*, 5 Ariz. 152.

In adverse proceedings the location is the plaintiff's title and if it is good he can recover; but if not he must be defeated.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

The burden of proof is on an adverse claimant to show that some part of the mining ground sought to be patented by the original applicant is within the boundaries of a mining claim previously located by him or his grantors.

Porter v. Tonopah North Star Tunnel, etc., Co., 133 Fed. 756, p. 762.
Affirmed in *Porter v. Tonopah North Star Tunnel, etc., Co.*, 146 Fed. 385.

In adverse proceedings the defendant may prove that at the time of the alleged entry by the adverse claimant, he, the defendant, held and owned a valid and subsisting location of the property, and was the first discoverer of the lode or vein the top or apex of which is within the surface lines of such adverse claimant.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

When the defendant proves in adverse proceedings that his was the prior location, the plaintiff must then fail for the reason that his alleged discovery when made was not open to exploration.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.
Hoban v. Boyer, 37 Colo. 185, p. 186.

In an action on an adverse claim the plaintiff is not required to prove that he was in the actual possession of the premises in controversy at the time of the commencement of the action; but a right to the possession is all that the party is required to prove.

Golden Fleece Gold, etc., Min. Co., v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 321.

An admission against his interest by the plaintiff and fatal to his case is equivalent to proof to the same effect.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

An admission by a plaintiff in adverse proceedings that the part of his claim in which he sunk a discovery shaft had been patented to a third person prevents him from recovering.

Gwillim v. Donnellan, 115 U. S. 45, p. 50.

Where the rights of two mining claimants are apparently equal with respect to mining ground the element of priority is controlling and preference is given to the senior locator.

St. Louis, etc., Co. v. Montana Min. Co. 104 Fed. 664, p. 668.
See *Argentine Min. Co. v. Terrible Min. Co.*, 122 U. S. 478, p. 484.

A successful adverse claimant prevails upon the strength of his own title under his own location, and he is not subrogated to possessory rights under the location of his defeated adversary and having prevailed in his adverse suit solely on the strength of a placer location he could take title under the judgment roll to lode claims in controversy only by virtue of his right to placer patents, and he could take them only as lodes within a placer, and unless his claim is of patentable placer character the lodes are not in that situation and are not therefore available to the successful party.

Clipper Min. Co. v. Eli Min. & Land Co., 33 L. D. 660, p. 669.
See *Clipper Min. Co. v. Eli Min. & Land Co.*, 34 L. D. 401.

Where a claimant under a second application prematurely entered the ground in conflict during the pendency of the suit by the adverse claimant and the first claimant

acquiesced in the judgment and conformed his entry thereto by eliminating the tract in dispute it settled the conflict between the claimants.

Gunnison Crystal Min. Co., In re, 2 L. D. 722.

Meyer v. Hyman, 7 L. D. 83.

Meyer v. Hyman, 7 L. D. 336.

A party to a contested mining claim may waive or abandon his right to a portion of the claim in controversy.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 585.

Last Chance Min., etc., Co. v. Tyler Min. Co., 61 Fed. 557, p. 561.

In a suit on an adverse claim the right of the plaintiff to recover can not be defeated by proof on the part of the defendant that a senior location inured to his benefit on the failure of such senior locator to perform the assessment work within the statutory period, where it is made to appear that the defendant made his location over a part of such senior location before the expiration of the year for the performance of such labor by the senior locator, although such senior locator failed to adverse.

Farrell v. Lockhart, 210 U. S. 142, p. 146.

Modifying Lavagnino v. Uhlig, 193 U. S. 443.

Reversing Lockhart v. Farrell, 31 Utah 155.

See Helena Gold & Iron Co. v. Baggaley, 34 Mont. 464, p. 474.

Street v. Delta Min. Co., 42 Mont. 371, p. 381.

This section recognizes that a person who initiated a right to a mining claim, recorded his location notice, and performed the other acts made necessary by law, will be entitled to a patent upon application unless adverse rights are set up as provided in this section; but a senior locator, possessed of a paramount right in mineral land for which a patent is sought may obtain such right and cause it in effect to inure to the benefit of the applicant for patent by failure to adverse.

Swanson v. Kettler, 17 Idaho 321, p. 333.

b. RECOVERY BY EITHER OR BOTH PARTIES.

In adverse proceedings each party is practically a plaintiff and must show title.

Brown v. Gurney, 201 U. S. 184, p. 190.

See Jackson v. Roby, 109 U. S. 440.

Perego v. Dodge, 163 U. S. 160.

In an action on an adverse claim it is incumbent upon each party to show affirmatively his title.

Slothower v. Hunter, 15 Wyo. 189, p. 197.

See Rosenthal v. Ives, 2 Idaho (244) 265.

Iba v. Central Association, etc., 5 Wyo. 355.

When the litigation is ended in the court each party may secure a patent for whatever portion of the lode he is by such judgment found to rightfully possess, and if entitled to a part only by the judgment he takes such part and his opponent takes whatever he, in like manner, is found to rightfully possess, and these rights are proved by a certified copy of the judgment.

Branagan v. Dulaney, 2 L. D. 744, p. 751.

In proceedings brought by an adverse party, if the proof shows that several parties are entitled to receive a patent for separate and distinct portions of the claim, they must file a certificate with a description by the surveyor general as required.

Bunker Hill, etc., Min., etc., Co. v. Empire State, etc., Min., etc., Co., 109 Fed. 538, p. 544.

This section recognizes portions of mining claims as entitled to patent and the issuance of separate patents as to all such portions as adverse parties may be rightfully entitled to.

Hagland, In re, 1 L. D. 593, p. 595.

A court can not properly direct a verdict in an action brought by an adverse claimant under this section on the ground that neither party is entitled to the mining claim in dispute, where the evidence offered shows one party is entitled to at least a part of such claim.

Crown Point Min. Co. v. Back, 97 Fed. 462, p. 465.

A claimant may have entry of the entire conflict area where an adverse claimant fails to establish his rights as shown by a certified copy of the judgment.

Late Acquisition Consol. Min. Co., In re, 18 C. L. O. 208.

An opponent who asserts compliance with the mining laws and files an adverse claim is in every sense a claimant of the tract in controversy as fully as the applicant for patent and may profit by the latter's patent proceedings in the event of a favorable judgment, and it can not be maintained that the applicant for patent, who, by virtue of the judgment unfavorable to both, stands in no better position than the adverse claimant, is alone privileged to prove a possessory title in himself, and that the adverse claimant is barred from further effort in that direction.

Brien v. Moffitt, 35 L. D. 32, p. 40.

This section recognizes portions of claims as entitled to patent and permits the issue of separate patents on such portions as adverse parties may rightfully possess.

Silver City Min. Co. v. Lowry, 19 Utah 334, p. 348.

The party recovering in a suit based on an adverse claim will, on complying with the provisions of this section, be entitled to a patent for the premises.

Healey v. Rupp, 37 Colo. 25, p. 30.

C. NEITHER PARTY ENTITLED TO RECOVER.

In the proceedings instituted in a court of competent jurisdiction after the adverse claim is filed neither party shall be entitled to judgment unless he establishes his right to the claim according to law, and in such case the claimant can not proceed in the Land Office and is not entitled to a patent.

Perego v. Dodge, 163 U. S. 160, p. 167.

Nome-Sinook Co. v. Simpson, 1 Alaska 578, p. 582.

Where neither party established title to the ground in controversy judgment can not be for either party, and the suit must be dismissed.

Bay State Silver Min. Co. v. Brown, 21 Fed. 167.

Anthony v. Jillson, 83 Cal. 296, p. 300.

See Jackson v. Roby, 109 U. S. 440.

Willitt v. Baker, 133 Fed. 937, p. 948.

Rankin, In re, 7 L. D. 411

In an action on an adverse claim it is not enough that one party show better or superior title as against the other, but one of the parties must show as against the Government the right to a patent for the disputed ground.

Rosenthal v. Ives, 2 Idaho (244, p. 248), 265.

See Jackson v. Roby, 109 U. S. 440, p. 441.

Lee Doon v. Tesh, 68 Cal. 43.

McGinnis v. Egbert, 8 Colo. 41.

In a suit on an adverse claim the court may find that another party is entitled to the patent.

Helena Gold & Iron Co. v. Baggaley, 34 Mont. 464, p. 472.

Wilson v. Freeman, 29 Mont. 470.

See Becharts v. Sizer, 12 C. L. O. 166.

Conway v. Hart, 129 Cal. 480, p. 488.

In adverse proceedings neither party can be adjudged to have title to the claim where it is not shown that either party has done the requisite work upon the claim in controversy.

Bay State Silver Min. Co. v. Brown, 21 Fed. 167, p. 169.
See Lalande v. McDonald, 2 Idaho (283, p. 289) 307.

The forfeiture of a mining claim as a defense for failure to perform the annual labor as required by this section is not required to be specially pleaded in proceedings to determine adverse claims, as the title of each party is in issue and neither can recover without sufficient proof.

Merchants National Bank v. McKeown, 60 Oreg. 325, pp. 327, 328.
See Steele v. Gold Lead Min. Co., 18 Nev. 80, p. 86.

In a contest for possession by a placer claimant against the locator of a vein or lode claim, the mere want of evidence to prove the existence of a vein of metallic ore of sufficient value to pay for extracting the metal will not warrant a recovery by the placer claimant any more than a second discoverer of a vein apparently valuable would entitle such second locator to recover possession from the owner of a placer claim.

Bevis v. Markland, 130 Fed. 226, p. 228.

In a contest between two locators as to the possession of a disputed tract of land, neither party is entitled to recover where it appears that there has been no discovery of mineral within the location of either.

Waterloo Min. Co. v. Doe, 56 Fed. 685, p. 689.

Where the proof shows that there has been no work done by either claimant on the mineral claim in controversy the court may properly instruct the jury to find against both claimants.

Rankin, In re, 7 L. D. 411.
See Newman v. Barnes, 23 L. D. 257.
Brien v. Moffitt, 35 L. D. 32.
Wilson v. Freeman, 29 Mont. 470, p. 475.

d. PROOF SUFFICIENT TO SUSTAIN CLAIM.

Where an adverse claim is properly presented to the Land Office it is not incumbent upon the adverse claimant to present any proof, and it is not the province of the Land Department to decide that the adverse claimant has no rights which he can not successfully assert in the proper court, and the proceedings must be stayed.

Ovens v. Stephens, 2 L. D. 699, p. 703; 9 C. L. O. 190, p. 191.
Eldred v. Lasey, 6 C. L. O. 34.

17. CONCLUSIVENESS OF JUDGMENT.

a. QUESTIONS CONCLUDED BY JUDGMENT.

A judgment of a court in a suit on an adverse claim determines the right of possession, and a certified copy of the judgment proves such right only; but the applicant must still make the proof required by law to entitle him to a patent, and the sufficiency of that proof is a matter for the determination of the Land Department.

Clipper Min. Co. v. Eli Min. Co., 194 U. S. 220, p. 233.
Ovens v. Stephens, 2 L. D. 699, p. 703.
Smith, In re, 10 L. D. 184, p. 187.
Apple Blossom Placer v. Cora Lee Lode, 14 L. D. 641, p. 642.
Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 103.
Taylor, In re, 9 C. L. O. 52, p. 53.
Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 109.
See Peregó v. Dodge, 163 U. S. 160, p. 168.
Branagan v. Dulaney, 2 L. D. 744.
Alice Placer Mine, In re, 4 L. D. 314, p. 316.
Chambers v. Pitts, 3 C. L. O. 162.

A judgment in adverse proceedings is conclusive as to matters which were in fact decided, but not as to matters which might have been determined.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 687.

Jefferson Min. Co. v. Anchoria-Leland Min., etc., Co., 32 Colo. 176, p. 182.

A judgment by default in adverse proceedings is conclusive between the parties of all that is essential to support the judgment.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 691.

Black v. Elkhorn Min. Co., 163 U. S. 445, p. 449.

Where a claimant bases his right in the adverse proceedings on a priority of location, a judgment for the plaintiff upon such a complaint is necessarily an adjudication in favor of the alleged priority of location.

Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, p. 691.

Where the judgment of a court is that the adverse claimant has the right only to a portion of the lode claimed by him, no entry can be made by the applicant including any portion of the lode claimed adversely until the judgment becomes final.

Branagan v. Dulaney, 2 L. D. 744, p. 750.

In an action on an adverse claim a judgment for the defendant establishes the right to the possession of the mining claim in controversy.

Delmoe v. Long, 35 Mont. 139, p. 154.

It is not the province of an adverse suit to show more than the plaintiff's right against any but the defendant, as all other persons who fail to adverse under this section lose all interest, and accordingly a finding as between the plaintiff and the defendant exhausts the field of controversy.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 115.

See *Burke v. McDonald*, 2 Idaho 646.

b. CONCLUSIVENESS OF JUDGMENT OF STATE COURT.

This section contains the only provision by which the Government has agreed to be bound by the judgment of a State court, and when a State court in an action on an adverse claim determines which of the parties is entitled to a mining claim, the Government will accept the judgment as conclusive as between the parties; but it is not bound by the adjudication, and the judgment is not conclusive of the right of a successful party to the property as against the Government, nor is it sufficient to divest the Government of title, nor is it alone sufficient to entitle the prevailing party to a patent.

Mason v. Washington-Butte Min. Co., 214 Fed. 32, p. 36.

Butte Land & Invest. Co. v. Merriman, 32 Mont. 402, p. 412.

See *Alice Placer Mine*, In re, 4 L. D. 314.

Perego v. Dodge, 163 U. S. 160, p. 168.

A judgment of a court of competent jurisdiction in proceedings brought by an adverse claimant, establishing the right of possession, is not available to persons who fail to show that they were parties to the action or have since acquired any interest in the claim in controversy.

Baker Fraction Placer, In re, 23 L. D. 112, p. 113.

c. CONCLUSIVENESS AS BETWEEN LODGE AND PLACER CLAIMANTS.

As between contending parties asserting titles of the same character, both claiming the ground as mineral, and one relying upon a lode and the other upon the placer character of the land in controversy, the judgment is conclusive and binding, and the prevailing party who duly complies with the law in all other respects is entitled to patent; but if the land proves not to be mineral in character then neither party is entitled to patent, since both stand upon the same footing in that particular, and if

the land is shown to be agricultural and not mineral in character, when embraced in a prior judicial award as to the right of possession, still it becomes at once subject to agricultural appropriation and patent.

Clipper Min. Co. v. Eli Min. & Land Co., 33 L. D. 660, p. 668.

See Clipper Min. Co. v. Eli Min. & Land Co., 34 L. D. 401.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 109.

Clipper Min. Co. v. Eli Min. & Land Co., 194 U. S. 220, p. 223.

Where claimants of lodes within placer limits elect to file adverse claims under this section and submit their claims to adjudication by a court, the law does not intend that they may at the same time assert before the Land Department their claims of rights under general exception and reservation created by section 2333, but they must abide the final determination thereof and are precluded from prosecuting further proceedings before the Land Department.

Jaw Bone Lode v. Damon Placer, 34 L. D. 72, p. 75.

Where placer claimants acquiesce in a judgment in a proceeding not strictly in accord with this section of the statute and make no objections to the issuance of a patent to a lode claimant and do not contest the jurisdiction or authority of the Land Department, then a patent may be issued to the lode claimant.

North Star Lode, In re, 28 L. D. 41, p. 44.

A judgment in proceedings commenced under this section to the effect that placer ground may be entered as a lode, or that known lodes may be entered as placer mining ground subject only to the right of the lode claimant to the possession of certain veins under the surface, is in conflict with the mineral laws and is not binding on the Land Department.

Apple Blossom Placer v. Cora Lee Lode, 14 L. D. 641, p. 643.

In an adverse claim filed in the local office and in the pleadings in the adverse suit where the adverse claimant rests his right to the mineral claim in controversy solely upon his alleged placer claim, and asserts that there was no known vein or lode therein, the judgment in awarding the land to the adverse claimant as a part of his placer claim and not otherwise does not establish in him any right to make a lode entry or receive a lode patent, and accordingly such lode entry should be canceled.

Clipper Min. Co. v. Searl, 29 L. D. 137, p. 139.

d. CONCLUSIVENESS OF JUDGMENT ON LAND DEPARTMENT.

This section provides that the judgment in the adverse proceedings shall govern the rights of the parties in the Land Office.

United States v. Marshall Min. Co., 129 U. S. 579, p. 584.

The judgment of a court in adverse proceedings determines the right of possession as between the parties but does not deprive the Land Department of authority to ascertain whether the mining laws have been complied with and land is mineral in character.

Bimetallic Min. Co., In re, 15 L. D. 309, p. 310.

See Apple Blossom Placer v. Cora Lee Lode, 14 L. D. 641.

A judgment duly entered in proceedings instituted under this section is not subject to collateral attack in the department so long as it remains in force.

Silver King Lode, In re, 14 L. D. 308, p. 309.

See Nettie Lode v. Texas Lode, 14 L. D. 180.

Newman v. Barnes, 23 L. D. 257.

Stranger Lode, In re, 23 L. D. 321.

Conway, In re, 29 L. D. 388, p. 390.

If a decree in a proceeding by an adverse claimant is not of such a character as to preclude an original adjudication between the parties as to right of possession to any ground in conflict by the proper court under this section, then the matter of the running

of the statute of limitations and any attempted fraudulent relocation will be open to inquiry and determination by a court the same as if no decree had been rendered; but if the decree is such as to be conclusive upon the court in proceedings between the parties, as conforming to this section, and thus prevent a reexamination by a court, then it is equally conclusive upon the Land Department and prevents a reexamination of the questions by it.

Cain v. Addenda Min. Co., 29 L. D. 62, p. 67.

A judicial award to a junior locator in adverse proceedings of a part of the ground in conflict is none the less binding upon the Land Department and the immediate parties because made pursuant to a stipulation between the parties.

Stranger Lode, In re, 28 L. D. 321, p. 327.

See Greater Belt Gold Min. Co., In re, 28 L. D. 398.

Carrie S. Gold Min. Co., In re, 29 L. D. 287.

Federal Gold Min., etc., Co., In re, 29 L. D. 71, p. 72.

Conway, In re, 29 L. D. 388, p. 391.

Connell, In re, 29 L. D. 574.

Patent may issue upon judgment of the court when with full opportunity the court has found in favor of a party who has regularly proceeded with his application, and the Land Department can not look behind such judgment, as the department is concluded by the action and judgment of the court.

Mason v. Washington-Butte Min. Co., 214 Fed. 32, p. 36.

Taylor, In re, 9 C. L. O. 92.

A judgment rendered in an action between two claimants for a mining claim in a suit not instituted in accordance with the provisions of this section can not in any way bind the Land Department or control its action, but the application must be decided upon the record as presented to the department.

Nichols v. Becker, 11 L. D. 8, p. 14.

Allen v. Myers, 1 Alaska 114, p. 120.

See Cain v. Addenda Min. Co., 24 L. D. 18.

Brandt v. Wheaton, 52 Cal. 430.

18. CERTIFIED COPY OF JUDGMENT.

After judgment has been rendered in adverse proceedings, the successful party may file a certified copy of the judgment and upon performance of the statutory requirements shall receive a patent for the claim.

Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 582.

On the final rendition of the judgment in the adverse proceedings the successful party, without further notice, shall file a copy of the judgment with the register, together with the certificate of the surveyor general, showing the performance of the assessment work or improvements made, and the required description. The whole proceedings are thereupon certified to the General Land Office, and upon payment of the proper fees a patent shall issue according to the decision of the court.

Gwillim v. Donnellan, 115 U. S. 45, p. 49.

Wolverton v. Nichols, 119 U. S. 485, p. 488.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 297.

Perego v. Dodge, 163 U. S. 160, p. 165.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 77.

Doe v. Waterloo Min. Co., 43 Fed. 219, p. 221.

Jackson Min. Co., In re, 3 L. D. 149, p. 150.

Smith, In re, 10 L. D. 184, p. 185.

Marburg Lode Min. Claim, In re, 30 L. D. 202, p. 210.

Manning v. Strehlow, 11 Colo. 451, p. 456.

Healey v. Rupp, 37 Colo. 25, p. 28.

The certified copy of a judgment of the court in an action on an adverse claim proves the right of possession only and the applicant must still make the proof required by law to entitle him to patent.

Perego v. Dodge, 163 U. S. 160, p. 168.

Duffield v. San Francisco Chemical Co., 198 Fed. 942, p. 944.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 103.

It is not necessary for an adverse claimant who has prosecuted his proceedings to judgment in his favor, under this section, to make an original application for patent for the ground included in such judgment, as it can be patented upon presentation of a certified copy of the judgment.

Woods v. Holden, 27 L. D. 375, p. 377.

While the successful party in a suit is under no obligation to file a copy of the judgment roll, if he does not wish to avail himself of the judgment, yet when occasion arises to note the result for the information of the Land Department the one who undertakes it is under every obligation to disclose the true nature of the judgment.

Brien v. Moffitt, 35 L. D. 32, p. 36.

It is doubted by the California court that the filing of a judgment roll would entitle a prevailing party to a patent in the face of evidence that an appeal had been taken or was being taken, or that proceedings for a new trial were pending.

Lee Doon v. Tesh, 131 Cal. 406, p. 408.

If an adverse claim has been filed and proceedings begun in a court under this section it is error for the local officers to permit an entry in the absence of a certified copy of the judgment, but it is their duty to make the entry conform to such judgment and then transmit the same to the Land Department, so that patent may issue accordingly.

Silver King Lode, In re, 14 L. D. 308, p. 309.

An entry prematurely made pending a suit may be sustained if the entryman succeeds in the suit.

Meyer v. Hyman, 7 L. D. 336 (on review).

D. AUTHORITY AND JURISDICTION OF LAND DEPARTMENT.

1. JURISDICTION AND DUTY AS TO ADVERSE CLAIMS.
2. AUTHORITY OF LAND OFFICE—INSTANCES.
3. WANT OF AUTHORITY—INSTANCES.
4. DEPARTMENT MUST FOLLOW COURT DECISIONS.
5. SURVEYOR GENERAL—POWERS AND DUTIES.
6. PROCEEDINGS IN DEPARTMENT AFTER TERMINATION OF SUIT.
7. ISSUE OF PATENT PURSUANT TO JUDGMENT.
8. DEPARTMENT REGULATIONS.

1. JURISDICTION AND DUTY AS TO ADVERSE CLAIMS.

The department is the only tribunal having jurisdiction to pass upon the question whether the terms of the statute have been complied with, and if not complied with the department may require full compliance by directing a new publication of notice, so that during the period of publication so ordered an adverse claimant may present his claim and begin suit thereon under this section.

Bright v. Elkhorn Min. Co., 8 L. D. 122, p. 124.

See *Bright v. Elkhorn Min. Co.*, 9 L. D. 503.

When an adverse claim is presented for consideration, it is the duty of the Land Office to examine it and determine whether the claimant has substantially set forth

under oath its natural boundaries and extent, and the jurisdiction of the Land Office is then ended until the matter is determined in a court or the determination waived.

Ovens v. Stephens, 2 L. D. 699, p. 703.

The fact that an adverse claimant commenced a suit against the applicant for patent and other parties after the expiration of the 30 days will not be considered by the Land Department.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 184.

Morse v. Streeter, Sickels' Min. L. & D. 190.

Congress, by this section, removed from the jurisdiction of the Land Department the determination of the question of mere rights between individuals; but it did not take away the jurisdiction to try and determine whether the mining laws had been complied with.

Weinstein v. Granite Mountain Min. Co., 14 L. D. 68, p. 70.

See *Nevada Lode*, In re, 16 L. D. 532, p. 533.

The filing of an adverse claim does not prevent the Land Department from investigating the question as to whether the application embraces land not subject to patent as a mining claim.

St. Lawrence Min. Co. v. Albion Min. Co., 10 C. L. O. 51, p. 52.

It is the duty of the Land Office to pass upon the papers for application for a patent and upon the protest of an adverse claimant, and when suit is commenced upon an adverse claim all questions touching the possessory rights are transferred to the court and proceedings in the Land Office are suspended until all such questions are settled by the court and its determination must be respected, and it will be presumed that the court's action was within its jurisdiction.

Anthony, In re, 9 C. L. O. 164.

The fact that an adverse claim has been filed and a suit commenced in the proper court does not prevent the Land Department from deciding the question of the regularity of the action of a local office in receiving applications and dismissing from the records papers improperly placed in its files.

Great Eastern Min. Co. v. Esmeralda Min. Co., 2 L. D. 704.

A mere protest that does not present a claim as contemplated by this section should not be treated as an adverse claim, and the commencement of a suit does not require the Land Department to recognize the claim as an adverse claim within the meaning of this statute.

Thomas v. Elling, 25 L. D. 495, p. 497.

Thomas v. Elling, 26 L. D. 220.

Where an adverse claim is filed a hearing may be ordered to ascertain the character of the land.

Clipper Min. Co., In re, 22 L. D. 527, p. 528.

See *Searle Placer*, In re, 11 L. D. 441.

The jurisdiction of the Land Office is exclusive in proceedings for a patent to mineral lands as to all questions affecting the title and the exercise of its jurisdiction may be stayed only by filing an adverse claim as provided in this section, and in the absence of such claim neither the State nor the Federal courts will exercise jurisdiction in actions affecting the title to land included within the application, and it is only by virtue of the provisions of this section that courts can assume jurisdiction in a proper suit relating to the rights of possession to the ground applied for.

Low v. Katalla Co., 40 L. D. 534, p. 539.

See *Warnekros v. Cowan*, 13 Ariz. 42.

2. AUTHORITY OF LAND OFFICE—INSTANCES.

An application for a patent embracing a lode within the limits of a placer claim for which patent application is pending can not be permitted to proceed beyond the point of filing in the absence of a determination by the Land Department that the lode was known to exist at the date of the filing of the placer application; and the law does not contemplate a proceeding to that end before the Land Department, or the acceptance by the latter of such lode application, when an adverse suit against the placer application has been commenced by the lode claimant, pending final determination of which, under the stay commanded by this section, the adverse claimant could not be permitted to prosecute independent patent proceedings as to the land in controversy.

Jaw Bone Lode v. Damon Placer, 34 L. D. 72, p. 77.

See *Long John Lode Claim, In re*, 30 L. D. 298.

Under an adverse suit pursuant to this section a lode claim must be sustained to its full extent as located; and while in proceedings before the Land Department relying upon the reservation under section 2333 R. S., there can be awarded to the locator only his lode and 25 feet of territory on each side of its center, the essential feature of the latter proceeding, the known existence of the lode, is presumed to be raised in the adverse suit, as it must be, if the case is fully presented and can be fully determined.

Jaw Bone Lode v. Damon Placer, 34 L. D. 72, p. 77.

The discovery of the veins and lodes within the placer limits may have occurred at any time after the date of a placer location and the date of the trial of the cause, and the award of the court, under the issues raised and the findings made, leaves to the Land Department the determination of this question.

Clipper Min. Co. v. Eli Min. & Land Co., 34 L. D. 401, p. 411.

See *Aurora Lode v. Bulger Hill & Nugget Gulch Placer*, 23 L. D. 95.

In cases where the rights of adverse claimants are to be determined by the department, they must be determined on rules different from those relating to the right of appeal.

Ogg v. McDonald, 6 C. L. O. 188.

The Land Department has authority to determine what public land is mineral land and, as such, open to mining location, and the courts will not interfere to control the exercise of that power, but there is no express authority given the Land Department to decide under which of the two different methods of acquiring mining claims any given mineral land may be located.

Duffield v. San Francisco Chemical Co., 205 Fed. 490, p. 482.

See *Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co.*, 196 U. S. 337, p. 357.

The fact that an adverse claimant may by protest prevent the issuance of a patent to a mining claim for want of discovery does not authorize or invite an adverse claimant to bring any action before the Land Department which he should litigate in an adverse suit.

Rupp v. Healey, 38 L. D. 387, p. 394.

3. WANT OF AUTHORITY—INSTANCES.

When an adverse claim is filed the officers of the Land Office have no further jurisdiction over the case and can take no further action until a certified copy of the judgment is presented.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 585.

Nettie Lode v. Texas Lode, 14 L. D. 180, p. 182.

De Camp v. Cruse, 10 C. L. O. 50.

See *St. Lawrence Min. Co. v. Albion Min. Co.*, 10 C. L. O. 51.

Where an adverse claim is brought in a proper court the department is ousted of all jurisdiction until the case in the court is disposed of, and this, though the court proceedings are based on a claim for land for which application for patent has been rejected by the department, as the finding of the department in such case is not conclusive.

Clipper Min. Co., In re, 22 L. D. 527, p. 528.

Thomas v. Elling, 25 L. D. 495, p. 496.

See Clipper Min. Co. v. Eli Min., etc., Co., 184 U. S. 220.

Great Eastern Min. Co. v. Esmeralda Min. Co., 2 L. D. 704.

Jamie Lee Lode v. Little Forepaugh Lode, 11 L. D. 391.

Searle Placer, In re, 11 L. D. 441.

Clipper Min. Co. v. Searl, 29 L. D. 137, p. 140.

Clipper Min. Co. v. Eli Min., etc., Co., 33 L. D. 660, p. 663.

Clipper Min. Co. v. Eli Min., etc., Co., 29 Colo. 377.

Where an adverse claim has been filed and an action begun in the proper court, and such action is dismissed either by fraud or mistake, the Land Department can not decide that the action has terminated and issue a certificate to either party, but the court alone in which the case was pending must determine when the controversy is at an end, and until such decision all acts of the Land Office will be ignored.

McEvoy v. Hyman, 25 Fed. 539, p. 541.

See Richmond Min. Co. v. Rose, 114 U. S. 576.

A discrepancy between an adverse claim as filed and accepted in the local office and that upon which suit is instituted in a court will not authorize the Land Department to resume proceedings pending the suit in court.

Jamie Lee Lode v. Little Forepaugh Lode, 11 L. D. 391, p. 393.

See Bay State Gold Min. Co. v. Trevillion, 10 L. D. 194.

Hook v. Latham, 11 L. D. 425.

The Land Department will not sustain a motion to dismiss an adverse claim because the same was located after the application for a patent, as it is the duty of the department to determine only whether the adverse claim is made out in due form or properly alleged, and the department is not required to consider what may or what may not be the final action of a court upon such adverse claim.

Ovens v. Stephens, 9 C. L. O. 190, p. 191.

Where an adverse claim is sufficient upon which to frame a declaration for a proceeding in court and where the issue has actually been carried before a court of competent jurisdiction, the Department will not declare it ineffective and proceed to execute title papers without awaiting judgment of the court.

Robinson v. Mayger, 9 C. L. O., 190.

Where it appears that action was commenced on an adverse claim within the required time, the department will not, upon technical reasons, interpose objections to an adjudication of the claim by a court.

Reed v. Hoyt, 9 C. L. O. 190.

The department has no jurisdiction to determine whether a survey showing a conflict is correct or not, but this question is one for a court alone to determine.

Stuart Min. Co. v. Wooster, 7 C. L. O. 51.

The question as to the validity of an adverse claim can not be determined by the department, as that question is exclusively in the jurisdiction of a local court to be determined under an adverse proceeding provided for by this section.

Gowdy v. Kismet Gold Min. Co., 22 L. D. 624, p. 626.

Where adverse claimants are not seeking titles to the land, but each is asserting his right to the possession only, the determination of that right is committed by this section to a court of competent jurisdiction alone, as the department has no power to say that a claimant under a relocation has no right as against the original location.

Navajo Indian Reservation, In re, 30 L. D. 515, p. 520.

The Land Department has no authority to adjudge that a coowner is a trustee and holds in trust for the benefit of the other coowners, but this is a question which must be determined by a court of competent jurisdiction, and such a suit would not be an attack upon the proceedings in the Land Office and the parties in such case would not be compelled to wait until a final patent had been issued, but the department may determine for itself who among contending claimants under the same location is the owner of a mining claim for which a patent is being applied for, and whether or not an applicant is entitled to a patent; but in cases involving disputed claims under a local statute of limitations and questions of fraud the better course is that the parties be given an opportunity to litigate and settle the matter by appropriate judicial proceedings in the local courts, and in such case, if either party commences suit in court, the proceedings in the Land Department will be stayed.

Coleman v. Homestake Min. Co., 30 L. D. 364, p. 367

See *Malaby v. Rice*, 15 Colo. App. 364.

The Land Department has no authority to issue two patents for the same ground—one to the placer claimant to all the surface of the ground found by a court to belong to him, and one to the lode claimant for the lode declared to exist in such ground.

Apple Blossom Placer v. Cora Lee Lode, 14 L. D. 641, p. 643.

See *Pacific Slope Lode*, In re, 12 L. D. 686.

While the department has the right to determine for itself in each case whether action has been commenced in an appropriate court within the required 30 days, yet it will not undertake to review a decision of a court of competent jurisdiction holding that the suit was so commenced, when the holding involves a construction of a State statute and is a matter of State law.

Catron v. Lewisohn, 23 L. D. 20, pp. 23-26.

See *Richmond Min. Co. v. Rose*, 114 U. S. 576, p. 582.

De Garcia v. Eaton, 22 L. D. 16.

Madison Placer Claim, In re, 35 L. D. 551.

Gypsum Placer Claims, In re, 37 L. D. 484, p. 486.

4. DEPARTMENT MUST FOLLOW COURT DECISIONS.

Where a dispute does not involve the character of the land or the qualifications of the entryman, or his compliance with the law under which title is sought, the department may properly accept and follow the judgment of a court of competent jurisdiction which determines the respective rights of the contending parties and their interests in the land in controversy; but the department is not required to await the bringing of suit in such case, as there is no obligation upon either party to invoke the jurisdiction of a court, as in case of adverse claims.

Coleman v. Homestake Min. Co., 30 L. D. 364, p. 366.

See *Turner v. Sawyer*, 150 U. S. 578.

Thomas v. Elling, 25 L. D. 495.

Under this section patents may issue to different parties for separate and different portions of a mining claim, as shown by the judgment roll of the proper court.

De Witt, In re, 9 C. L. O. 34, p. 35.

In an action in ejectment for the possession of a mining claim on the filing of an adverse claim for the possession of a mining claim, it is sufficient where the verdict finds "the defendant guilty," as this implies that the plaintiff was entitled to the possession and that the defendant unlawfully withheld such possession from the plaintiff, and gives the land office the information necessary under this section and under the act of March 3, 1881 (21 Stat. 505).

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 113.

See *Burke v. McDonald*, 2 Idaho [646] 679.

McGinnis v. Egbert, 8 Colo. 41, p. 55.

Manning v. Strehlow, 11 Colo. 451, p. 455.

Golden Fleece Gold, etc., Min. Co. v. Cable Consol. Gold, etc., Min. Co., 12 Nev. 312, p. 320.

5. SURVEYOR GENERAL—POWERS AND DUTIES.

It seems that the surveyor general has no jurisdiction to decide the respective rights of the parties in case of conflicting claims.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 80.

6. PROCEEDINGS IN DEPARTMENT AFTER TERMINATION OF SUIT

After the entry of the judgment proceedings instituted under this section the Commissioner may order a hearing to ascertain the character of the land and whether the law has been complied with, as the judgment proves the right of possession only.

Apple Blossom Placer v. Cora Lee Lode, 14 L. D. 641, p. 643.
See *Alice Placer Mine*, In re, 4 L. D. 314.

The final passing of the title is not on the judgment of the court as certified, but is on the judgment of the Commissioner pursuant to the judgment of the court, and on certain evidence supplemental to that furnished by the certified copy of the judgment.

Alice Placer Mine, In re, 4 L. D. 314, p. 316.

The applicant for a patent for a mining claim or the adverse claimant seeking the benefits of this section must show that he has fully complied with all of its provisions.

Cedar Hill Min. Co., In re, 1 L. D. 628, p. 630.

On the determination of a suit the claimant must furnish, together with a certified copy of the judgment roll, an official plat showing the discovery, improvements made, tract awarded by the judgment, and an approved copy of the field notes of the survey corresponding to the award under the judgment by metes and bounds, the acreage thereof, and the improvements existing upon the claim.

Donlan, In re, 39 L. D. 353, p. 354.
See *Harsh*, In re, 2 L. D. 706.

An adverse claimant is only required, after commencement of suit, to establish to the satisfaction of the Land Department that he has complied with the requirements of the mining law by commencing the suit.

Bell v. Aitken, 4 C. L. O. 66.
See *Beatty*, In re, 2 C. L. O. 82.

This section refers to ground judicially adjudged to belong by right of possession to the adverse claimant, and the assignee of an adverse claimant in the same position as is ordinary, and must furnish evidence of \$500 worth of improvements on that portion of the claim formerly in controversy.

Jackson Min. Co., In re, 3 L. D. 149.

When a mineral claimant has obtained judgment in his favor in a court of competent jurisdiction, he may proceed to take the necessary steps to obtain patent according to the judgment and is not required to wait until the time for appeal has elapsed, but the duty is on the losing party to take an appeal and thereby obtain the further stay of proceedings.

Noonan v. Caledonian Gold Min. Co., 10 C. L. O. 167.

A compromise and settlement of a suit on an adverse claim must show a particular description of the land to be patented or to be excluded, so a proper description can be inserted in the patent.

Belden, In re, 9 C. L. O. 51.

It is no objection to an entry awarded in adverse proceedings to certain parts of the ground in conflict embraced therein that such ground was specifically excluded from the application for patent and from the notice thereof.

Stranger Lode, In re, 28 L. D. 321.
Federal Gold Min., etc., Co., In re, 29 L. D. 71, p. 72.

7. ISSUE OF PATENT PURSUANT TO JUDGMENT.

This section provides that a patent may issue to each of several parties for his portion of the claim according to the respective rights as shown by the judgment of the court.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 77.

On an adverse claim being filed and the rights determined in a court of competent jurisdiction, the patent may issue pursuant to the judgment; but the final passing of title is not on the judgment of the court independent of that of the Commissioner, but is on the judgment of the latter pursuant to that of the former, on certain evidence supplementary to that furnished by the judgment.

Clipper Min., etc., Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 233.

After judgment is entered in proceedings commenced under this statute, a patent usually issues in due time, but the patent is issued by the Land Department not on the judgment of the court alone, but on the judgment of the Commissioner pursuant to that of the court on certain evidence supplemental to that furnished by the judgment, as the office of the judgment ends when it determines the right of possession, but the right to a patent is not then established, as the successful litigant must prove by report of the surveyor general that sufficient improvements have been made on the claim, and the Commissioner may further investigate the character of the land.

Apple Blossom Placer v. Cora Lee Lode, 14 L. D. 641, p. 643.

See *Apple Blossom Placer v. Cora Lee Lode*, 21 L. D. 438.

8. DEPARTMENTAL REGULATIONS.

The Commissioner of the General Land Office is authorized to make and enforce regulations in reference to mining claims which are appropriate and within the limitations of law.

Anchor v. Howe, 50 Fed. 366, p. 367.

The authority to the Commissioner of the General Land Office to make rules and regulations applicable to mineral lands is not a grant of power to legislate, to add to the law, or to render its enforcement difficult, or to burden the proceedings with unnecessary hardship, and is designed to permit regulations simplifying and explaining the administration of the law.

Anchor v. Howe, 50 Fed. 366, p. 367.

Departmental regulations in conflict with the law are invalid, and those which enlarge its requirements, though not in exact conflict with it, must likewise be disregarded.

Anchor v. Howe, 50 Fed. 366, p. 367.

Kinney v. Von Bokern, 29 L. D. 460, p. 461.

The requirement that an adverse claimant shall notify the Land Office of the commencement of suit is an office regulation, and the failure to do this can not work forfeiture of right or justify the office in ignoring the law.

Halsey v. Hewitt, 5 C. L. O. 162.

E. PATENT—EFFECT.

A patent conveying the legal title must prevail over all other claims.

Richmond Min. Co. v. Rose, 114 U. S. 576, p. 581.

On the issue of a patent for a mining claim the legal title passes from the United States.

United States v. Marshall Min. Co., 129 U. S. 579, p. 587

The dignity and character of a patent is such that the patentee can not be called upon to prove the regularity of the steps before the Land Department, nor can he be called upon to explain the irregularities or improprieties in the processes by which the patent was secured, where the Government has not been injured or damaged.

United States v. Marshall Min. Co., 129 U. S. 579, p. 589.

A patent granting on its face to a claimant the right to all veins, lodes, and deposits, the tops or apices of which lie inside the end lines of its surface as patented, settles the rights of all parties as to all such veins throughout their entire depth and wherever they may go, so long as they are within the end lines of the survey.

Richmond Min. Co. v. Eureka Min. Co., 103 U. S. 839, p. 847.

The issuance of a mining patent is in effect an adjudication of all questions respecting matters which might have been the subject of an adverse claim, and on failure to adverse, the question of priority of title is conclusively presumed.

Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, p. 63.

See Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 114 Fed. 417, p. 420.

When the rights of an adverse claimant have been determined according to this section and a patent issued pursuant to its provisions it furnishes the highest and best evidence of title which a party can obtain, and a patent issued without authority of law conveys no substantial title.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 61.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

After patent is issued for a mining claim the question of the date or priority of location can only arise in seeking to apply the doctrine of relation in connection with a patent for the purpose of determining the ownership of minerals at the point of union or intersection of veins.

Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, p. 64.

A party can not remain silent for more than eight years after a decision against him, though erroneous, and then seek to correct such errors by a bill in chancery, either to obtain title to a mining claim or to contest the patent issued to another locator.

United States v. Marshall Min. Co., 129 U. S. 579, pp. 587, 588.

A foreign corporation has the right to purchase a patent issued to a citizen of the United States for a mining claim and by such purchase take all the rights and is entitled to all the privileges that would accrue to the original patentee.

Ramage, In re, 2 C. L. O. 115.

F. LAVAGNINO v. UHLIG.

1. COMMENTS AND CRITICISMS.

The case of Lavagnino v. Uhlig, 198 U. S. 443, was one of adverse proceedings against an applicant for patent, and the decision being based on the section regulating such proceedings anything the court said regarding the rights or forfeiture of an applicant in such proceedings may be considered as dictum, and to enforce all the statements in that opinion in cases generally would necessitate the setting aside of the provisions in other sections.

Nash v. McNamara, 30 Nev. 114, p. 138.

This case was examined and criticized in *Montagne v. Labay*, 2 Alaska 575, and it was there held that the case applies only in adverse proceedings and only in its own limited sphere to exceptional facts and that former cases declaring a contrary doctrine were not overruled.

Nash v. McNamara, 30 Nev. 114, p. 140.

See *Brown v. Gurney*, 201 U. S. 184.

See *Hoban v. Boyer*, 37 Colo. 185.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 57.

Lockhart v. Farrell, 31 Utah 155.

The Colorado court has declared the doctrine that an abandoned senior location does not inure to the benefit of an overlapping junior location, but that on such abandonment it reverted to the public domain and became subject to relocation by any person, including the junior location, as well as third persons; but the court makes no reference to *Lavagnino v. Uhlig*, 198 U. S. 443.

Moorhead v. Erie Min. etc., Co., 43 Colo. 408.

An adverse claimant, upon application for patent by a junior locator, may, as against a senior locator, or a third location as against a junior location, show that the ground covered by such senior location had become a part of the public domain so as to be subject to relocation before the expiration of the statutory period for performing annual labor, by showing that there had been an actual abandonment of the claim by the first locator.

Swanson v. Kettler, 17 Idaho 321, p. 336.

Explaining *Belk v. Meagher*, 104 U. S. 279.

Lavagnino v. Uhlig, 198 U. S. 443.

Farrell v. Lockhart, 210 U. S. 142.

Brown v. Gurney, 201 U. S. 184.

The Supreme Court of Montana say the holding in *Lavagnino v. Uhlig*, 198 U. S. 443, on the effect of the abandonment of a mining claim by a senior locator inuring to the benefit of a junior locator has been discredited by the Supreme Court of the United States in *Brown v. Gurney*, 201 U. S. 184, and *Farrell v. Lockhart*, 210 U. S. 142.

Street v. Delta, Min. Co., 42 Mont. 371, p. 384.

In criticizing this case the Supreme Court of Nevada called attention to the fact that the senior locator in that case waived his interests by failing to appear and was not in court or trying to assert them, and anything said regarding the forfeiture of his rights was incidental.

Naah v. McNamara, 30 Nev. 114, p. 139.

A junior locator, as an adverse claimant, can not base his right to the claim in controversy on the ground of the subsequent abandonment of the senior location and that such abandonment inured to his benefit.

Dufresne v. Northern Light Min. Co., 2 Alaska 592, p. 598, denying *Lavagnino v. Uhlig*, 198 U. S. 443, p. 456.

The district court of Alaska denies the rule established in *Lavagnino v. Uhlig* in a suit in ejectment between a relocater of the claim and a junior of two prior locators after the senior location has been forfeited for failure to perform the annual labor.

Montagne v. Labay, 2 Alaska 575, p. 576.

See *Dufresne v. Northern Light Min. Co.*, 2 Alaska 592.

NOTE.—In the *Lavagnino* case the question for decision was stated thus: "Where there was a conflict of boundaries between a senior and junior location, and the senior location has been forfeited, has the person who made the relocation of such forfeited claim the right, in adverse proceedings, to assail the title of the junior locator in respect to the conflict area which had previously existed between that location and the abandoned or forfeited claim." This question the court in the opinion answers in the negative and holds that the relocater of a forfeited claim in proceedings adverse an application by a junior locator, a part of whose location overlapped the senior location and the ground as relocated, can not offer evidence tending to establish the validity of such senior location at the time of the making of the junior overlapping location.

In the case of *Farrell v. Lockhart*, 210 U. S. 142, the court, and the same justice, said that taking into view the prior decisions, and especially *Belk v. Meagher*, 104 U. S. 279, and *Brown v. Gurney*, 201 U. S. 184, the *Lavagnino* case should be "qualified" and the alleged qualification was stated: "So as not to exclude the right of a subsequent locator on an adverse claim to test the lawfulness of a prior location of the same mining ground upon the contention that at the time such prior location was made the ground embraced therein was covered by a valid and subsisting mining claim." The court followed this with the apparent unnecessary observation to the effect, "that this qualification but permits a third locator to offer proof tending to establish the existence of a valid and subsisting location anterior to that of the location which is being adverse."

In the Lavagnino case the question put by the court as the vital question in the case was decided in the negative. In *Farrell v. Lockhart*, precisely the same question was answered in the affirmative. The court in the latter case, to save the embarrassment apparently of overruling the former case, added a wholly unnecessary proposition, and one that was not involved in either case to the effect that, "Ground embraced in a mining location may become a part of the public domain so as to be subject to another location before the expiration of the statutory period for performing labor, if, at the time the second location was made, there had been an actual abandonment of the claim by the first locator." But it is believed that this unnecessary appendage does not save the Lavagnino case for two reasons: First, there was no question in that case as to the abandonment of the senior location at the time of the making of the overlapping junior location; second, if there had been an alleged abandonment of the senior location under the rule established in *Farrell v. Lockhart*, following the older decisions, the junior locator as against an adverse claim of a relocater of the senior location would be entitled to offer evidence tending to establish the alleged abandonment, and the relocater, as the adverse claimant, would be entitled to offer evidence tending to overcome the alleged abandonment.

All difficulty is avoided by considering the case of *Lavagnino v. Uhlig* in its essential, vital element, as shown in the question for decision as stated by the court, overruled by the subsequent case of *Farrell v. Lockhart*. Every court of record in which the question has arisen has either distinguished or denied the doctrine of the Lavagnino case, and since the decision in *Farrell v. Lockhart* it has not been regarded as an authority on the essential and vital proposition of the case.

These views are supported by the following authorities:

- See* *Montagne v. Lebay*, 2 Alaska 575.
Dufresne v. Northern Light Min. Co., 2 Alaska 592.
Hoban v. Boyer, 17 Colo. 185.
Swanson v. Kettler, 17 Idaho 321.
Rose v. Richmond Min. Co., 17 Nev. 25, p. 57.
Nash v. McNamara, 30 Nev. 114.
Belk v. Meagher, 104 U. S. 379.
Brown v. Gurney, 201 U. S. 184.
Farrell v. Lockhart, 210 U. S. 142.

G. AMENDMENTS TO SECTION 2326 REVISED STATUTES.

AMENDMENT 1.

21 Stat. 506, March 3, 1881.

AN ACT To amend section 2326 of the Revised Statutes relating to suits at law affecting the title to mining claims.

Be it enacted, etc., That if, in any action brought pursuant to section 2326 of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

A. AMENDATORY ACT.

1. PURPOSE AND OBJECT.
2. NATURE OF PROCEEDINGS—TRIAL.
3. JURISDICTION OF FEDERAL COURTS—PRACTICE.
4. ACTIONS IN STATE COURTS—FORM AND PRACTICE.
5. PROCEEDINGS IN AID OF LAND DEPARTMENT.
6. PROOF REQUIRED BY EACH PARTY.
7. DEFENSE—PLEADING AND PROOF.
8. DETERMINATION OF RIGHTS—EFFECT.
9. NEITHER PARTY ENTITLED TO JUDGMENT.
10. EFFECT OF JUDGMENT AGAINST BOTH PARTIES.
11. TERMINATION OF PROCEEDINGS.
12. APPLICANT MAY PERFECT TITLE AFTER SUIT.
13. MUNICIPALITY MAY INTERVENE.

1. PURPOSE AND OBJECT.

The purpose of this amendatory act was to prevent the applicant from perfecting his claim for a patent if the adverse claimant failed in his adverse proceeding, unless such applicant recovered a judgment in his favor.

Perego v. Dodge, 163 U. S. 160, p. 167.

Brown v. Gurney, 201 U. S. 184, p. 191.

Mares v. Dillon, 30 Mont. 117, p. 139.

It is not the intention of this section to change the methods of trial, but its manifest object is to provide for an adjudication and permit the party to receive his patent who is determined to be the rightful owner, and to deny it to either if he has failed to make out his case.

Perego v. Dodge, 163 U. S. 160, p. 167.

The purpose of this amendment was to refer the whole proceedings, including the matter between the United States and the successful party, to the courts and to have their rights determined in the Federal courts.

Burke v. Bunker Hill Min., etc., Co., 46 Fed. 644, p. 647.

This statute can have no application to trials on adverse claims filed prior to its enactment.

Armstrong v. Lower, 6 Colo. 393, p. 394.

2. NATURE OF PROCEEDINGS—TRIAL.

Congress did not intend by this amendment to provide that litigation of this sort must be at law or must be invariably tried by a jury.

Perego v. Dodge, 163 U. S. 160, p. 168.

Providence Gold Min. Co. v. Burke, 6 Ariz. 323, p. 331.

Mares v. Dillon, 30 Mont. 117, p. 139.

See *Jordan v. Duke*, 6 Ariz. 55.

Actions brought to establish the equitable title of a mining claim are not affected by this act.

Alice Placer v. Addie Stevens & Lazy Bill Lodes, 3 Brainard Leg. Prec. 242, p. 246.

3. JURISDICTION OF FEDERAL COURTS—PRACTICE.

Under this amendment a suit brought in support of an adverse claim is regarded as a suit arising under the laws of the United States within the meaning of the statute giving jurisdiction to Federal courts.

Burke v. Bunker Hill Min., etc., Co., 46 Fed. 644, p. 646.

Frank Gold, etc., Min. Co. v. Larimer Min., etc., Co., 8 Fed. 724.

Cheesman v. Shreeve, 37 Fed. 36.

Strasburger v. Beecher, 44 Fed. 209, p. 213.

These cases are in effect overruled. See section 2326, p. 456.

By this amendment the United States is made substantially, though not formally, a party to a suit to determine an adverse claim, and in such case the Government is entitled to have its rights determined in the national courts.

Burke v. Bunker Hill Min., etc., Co., 46 Fed. 644, p. 647.

4. ACTIONS IN STATE COURTS—FORM AND PRACTICE.

The form of the action under this statute, as well as under the original section (2326 R. S.), and the mode of procedure are regulated by the same rules and controlled by the same statute that apply to ordinary actions in the State courts

Murray v. Polglase, 23 Mont. 401, p. 413.

See *Wolverton v. Nichols*, 5 Mont. 89.

Milligan v. Savery, 6 Mont. 129, p. 130.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240.

Under this act Congress regulates the character of the finding and judgment, though the form of action may be that prescribed by a State statute, and the State court adopts the provisions of this act as if they were a part and parcel of the State statute.

Iba v. Central Association, etc., 5 Wyo. 355, p. 375.

5. PROCEEDINGS IN AID OF LAND DEPARTMENT.

The proceedings required to be commenced in a court of competent jurisdiction are merely in aid of the Land Department, and the object of this amendment was to secure that aid as much in cases where both parties fail to establish title as where judgment was rendered in favor of either, and the court or jury either in a case at law or a suit in equity may decide accordingly.

Perego v. Dodge, 163 U. S. 160, p. 167.

Tonopah Fraction Min. Co. v. Douglas, 123 Fed. 923, p. 926.

6. PROOF REQUIRED BY EACH PARTY.

Under this amendment each party to the suit on an adverse claim is required to establish his right to the ground in controversy and an adverse claimant must allege and prove every step necessary to establish his right to the mining claim in dispute, with the exception of the advertisement and the certificate of the surveyor general as to the amount of work done.

Allyn v. Schultz, 5 Ariz. 152, p. 160.

Kepler v. Becker, 9 Ariz. 234, p. 239.

This act makes it necessary that a party claiming the right to the possession of any portion of the public domain in an adverse suit by virtue of a mining location must establish such right by evidence of a compliance with the State and Federal statutes relating to the location and holding of mining claims.

Becker v. Pugh, 9 Colo. 589.

Bryan v. McCaig, 10 Colo. 309, p. 314.

Manning v. Strehlow, 11 Colo. 451.

Thomas v. Chisholm, 13 Colo. 105, p. 107.

Under this amendment a recovery in a suit brought on an adverse claim can not be maintained by proof of occupancy merely of the premises in dispute.

Becker v. Pugh, 9 Colo. 589, p. 590.

The construction given this act by the executive department in the rules and regulations of the Land Office shows that a locator, in order to establish a valid mining location, must show compliance with the local rules and regulations of miners, as well as with Federal and State statutes.

Becker v. Pugh, 9 Colo. 589, p. 590.

See *Sullivan v. Hense*, 2 Colo. 424.

Consolidated Republican Mountain Min. Co. v. Lebanon Min. Co., 9 Colo. 343.

Bryan v. McCaig, 10 Colo. 309.

While the term "title" is used in this act, yet it must be assumed that the Government holds the title until patent issues, yet the Government considers the locator entitled to patent on proof of compliance with the statutory requirements.

Iba v. Central Association, etc., 5 Wyo. 355, p. 363.

While in an action under this statute each party is required to establish by appropriate proof his right or title to the mining claim in controversy, yet there are some matters of mere practice that need not be proved by evidence if admitted by the pleadings.

Iba v. Central Association, etc., 5 Wyo. 355, p. 376.

See *Rosenthal v. Ives*, 2 Idaho [244] 265.

Burke v. McDonald, 2 Idaho (646) 679.

7. DEFENSE—PLEADING AND PROOF.

In an action on an adverse claim the defendant must introduce evidence directly and affirmatively establishing his claim, and it can not be said that either party has the burden of proof, and the defendant is not entitled to recover if the evidence is equally balanced, and the defendant, as well as the plaintiff, is required to establish his paramount claim or title; otherwise a defendant who succeeds merely because the plaintiff fails might, by the production of the record, obtain title to a mining claim to which he was not in fact entitled.

Iba v. Central Association, etc., 5 Wyo. 355, p. 364.
See *Becker v. Pugh*, 9 Colo. 589,

In an action by an adverse claimant instituted in a State court of Wyoming, the defendant, the applicant for patent, may offer his evidence of ownership and establish whatever rights he may have in the mining claim in controversy under a general or specific denial, and, accordingly, an affirmative answer is not new matter requiring a reply by the plaintiff; and if the defendant established his ownership to the claim in controversy, he is entitled to a finding and judgment even under a general denial, and a judgment should not be rendered on the pleading where the plaintiff fails to reply to an affirmative answer.

Iba v. Central Association, etc., 5 Wyo. 355, p. 375.

In an action on an adverse claim where the plaintiff seeks to establish a claim paramount to that of the defendant who has made application for patent, it is doubtful if the defendant can have his title quieted, as the relief to be obtained in a suit at law is adequate and the determination of the controversy settles the rights of either or the rights of neither party, and the absolute right of either party to the premises in dispute is the only question to be determined, and more than this ought not to be permitted in the pleadings, and a single material issue precludes a judgment on the pleadings.

Iba v. Central Association, etc., 5 Wyo. 355, p. 366.
See *Rice v. Bush*, 16 Colo. 484.
Horsky v. Moran, 13 Mont. 250.
Widmer v. Martin, 87 Cal. 88.

8. DETERMINATION OF RIGHTS—EFFECT.

Under this amendment not only the rights of the parties as between themselves, but the rights of the parties as between themselves, respectively, and the United States are to be conclusively determined.

Burke v. Bunker Hill Min., etc., Co., 46 Fed. 644, p. 647.
See *Jackson v. Roby*, 109 U. S. 440, p. 444.
Wolverton v. Nichols, 119 U. S. 485.
Chambers v. Harrington, 111 U. S. 350.
Doe v. Waterloo Min. Co., 43 Fed. 219.

An adverse claimant has the right to be heard upon his claim and to have the right of possession declared to be either in himself or in the defendant or another.

Wulff v. Manuel, 9 Mont. 279, p. 284.

The ultimate result of a suit under this amendatory act is a finding that the plaintiff has the exclusive right and title, save only as to the legal title of the Government, or that the defendant has the same title, or that neither the plaintiff nor the defendant has the title.

Iba v. Central Association, etc., 5 Wyo. 355, p. 363.

On application for a patent for a mining claim embracing several locations an adverse claimant may prove abandonment of any one of such locations by failure to make the

annual expenditure upon it or upon a claim held in common for its benefit, and this accords with the act of March 3, 1881 (21 Stat. 505).

Good Return Min. Co., In re, 4 L. D. 221, p. 224.

Mackie, In re, 5 L. D. 199.

9. NEITHER PARTY ENTITLED TO JUDGMENT.

In an adverse suit, if the title to the claim shall not be established by either party, the jury must so find and judgment be entered accordingly.

Brown v. Gurney, 201 U. S. 184, p. 190.

Rankin, In re, 7 L. D. 411, p. 412.

Newman v. Barnes, 23 L. D. 257.

Brien v. Moffitt, 35 L. D. 32.

Ritter, In re, 37 L. D. 715, p. 717.

Rupp v. Healey, 38 L. D. 387, p. 391.

Burke v. McDonald, 2 Idaho (310, p. 315) 339.

Under this amendment, where neither party shows title to the ground in controversy, neither shall have judgment, but such cases are referred to a court for its determination for the guidance of the land office, and the jurisdiction of the court in such cases is based upon the prior proceedings in the land office.

Providence Gold Min. Co., v. Burke, 6 Ariz. 323, p. 330.

Under this amendment neither party to the adverse suit can prevail unless he shows title to the ground in dispute, and on failure to do so cost shall not be allowed to either party.

Becker v. Pugh, 9 Colo. 589, p. 590.

This act, authorizing a jury to find that title to the ground in controversy has not been established by either party, makes it absolutely necessary that a party claiming the right to the possession of any portion of the public land in an adverse suit by virtue of a mining location must establish such right by evidence of a compliance with the State and Federal statutes as to the location and holding of a mining claim.

Bryan v. McCaig, 10 Colo. 309, p. 314.

Duncan v. Eagle Min. Co., 48 Colo. 569, p. 587.

See Becker v. Pugh, 9 Colo. 589.

If neither party establishes his right to the mining claim in controversy, judgment must be entered accordingly, and the result is the same if the defendant does not introduce any evidence and the plaintiff is nonsuited.

Kirk v. Meldrum, 28 Colo. 453, p. 459.

This amendment to the original section authorizes a finding against both parties in case neither one establishes his right to the ground in controversy.

Mares v. Dillon, 30 Mont. 117, p. 140.

The rule that a plaintiff in ejectment must recover upon the strength of his own title, or that otherwise the defendant is entitled to a judgment, does not prevail in actions under this section based on an adverse claim, but when a suit is brought on an adverse claim the title of both parties to the controversy has to be settled and the rights of the Government against both parties are also to be determined, and the judgment must be that the plaintiff has title or that neither of them has title.

Iba v. Central Association, etc., 5 Wyo. 355, p. 363.

Slothower v. Hunter, 15 Wyo. 189, p. 198.

10. EFFECT OF JUDGMENT AGAINST BOTH PARTIES.

A final judgment that neither the plaintiff nor the defendant is entitled to the right of possession, nor should take anything by the action, is a conclusive determination that under the patent proceedings out of which the controversy arose neither party

is entitled to a patent, and that such proceedings were therefore without effect from the beginning, and the rendition of such judgment causes the patent application to fail.

Brien v. Moffitt, 35 L. D. 32, p. 41.

The effect of a verdict and finding that neither party is entitled to the possession of a mining claim is to leave the defendant who had applied for a patent without any right, and to leave the plaintiff in no better situation.

Brien v. Moffitt, 35 L. D. 32, p. 39.

See Jackson v. Roby, 109 U. S. 440, p. 444.

This act plainly precludes the local office from entertaining application to enter the land after a judgment finding that neither party is entitled to possession of the mining claim in controversy.

Newman v. Barnes, 23 L. D. 257, p. 258.

Brien v. Moffitt, 35 L. D. 32, p. 35.

If in an action under this amended act neither party established title to the disputed ground, the jury may so find, and judgment shall be entered accordingly, and neither party can recover his costs, and the claimant can not proceed in the land office until he perfects his title.

Iba v. Central Association, etc., 5 Wyo. 355, p. 360.

The terms of the concluding clause of this act do not justify the conclusion that in the event of a judgment against both parties the applicant for a patent may thereupon go forward independently of the judgment to complete the patent proceedings theretofore initiated by him and without giving further notice upon having proved his title.

Brien v. Moffitt, 35 L. D. 32, p. 40.

11. TERMINATION OF PROCEEDINGS.

A judgment adverse to both parties effectually terminates the patent proceedings and leaves no question to be determined by the Land Department.

Brien v. Moffitt, 35 L. D. 32, p. 41.

This amendment does not prohibit nonsuits in actions on adverse claims.

McWilliams v. Winslow, 34 Colo. 341, p. 344.

Where the judgment of a court on an adverse claim is that neither party is entitled to the possession of the claim, such judgment effectually terminates the patent proceedings and entry can not thereafter be lawfully allowed except upon the prosecution of new patent proceedings.

Brien v. Moffitt, 35 L. D. 32, p. 41, overruling Rankin, In re, 7 L. D. 411.

See Newman v. Barnes, 23 L. D. 257.

12. APPLICANT MAY PERFECT TITLE AFTER SUIT.

Under this section proceedings may be stayed until a claimant has perfected his title.

Rankin, In re, 7 L. D. 411.

Under this act, if neither party establishes his title to the ground in controversy, judgment shall be entered accordingly, and costs shall not be allowed to either party, but a claimant may proceed in any proper manner and perfect his title.

Taylor, In re, 9 C. L. O. 92.

Under this act, if an applicant has failed to establish his right in an action brought pursuant to section 2326 R. S., he shall not proceed in the Land Office or be entitled to a patent until he perfects his title.

Rankin, In re, 7 L. D. 411.

If neither party establishes his right to the claim in controversy, the court or jury must so find, and the proceedings in the Land Office are stayed until title is perfected, and a possessory title is all that is possible under the circumstances.

Manning v. Strehlow, 11 Colo. 451, p. 454.

13. MUNICIPALITY MAY INTERVENE.

The provisions of this act do not prevent a municipal corporation from intervening in a suit between the mineral applicant and an adverse claimant for the purpose of protecting its public interest and rights.

Nome-Sinook Co. v. Simpson, 1 Alaska 578, p. 582.

See Gavigan v. Crary, 2 Alaska 370, p. 377.

Bechtol v. Bechtol, 2 Alaska 397.

This statute makes it the duty of a judge or jury to determine for or against or in favor of either the applicant or the adverse claimant, according to the proofs.

Becharts v. Sizer, 12 C. L. O. 166.

AMENDMENT 2.

23 Stat. 49, 1 Supp. 338, April 26, 1882.

AN ACT To amend section 2326 of the Revised Statutes, in regard to mineral lands, and for other purposes.

Be it enacted, etc., That the adverse claim acquired by section 2326 of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or of the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.

SEC. 2. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record or before any notary public of any State or Territory.

A. PROOF OF CITIZENSHIP.

B. ADVERSE CLAIM FILED BY AGENT, p. 503.

A. PROOF OF CITIZENSHIP.

Where citizenship has not been proved as required under the original section it may be established as provided by this amendatory act.

Circular, In re, 1 L. D. 685.

An affidavit making proof of citizenship under this act must show when and the place where the applicant was born or his present place of residence.

Mosley, In re, 6 L. D. 620, p. 621.

The affidavit required for proof of citizenship under this section need not show when and the place where the applicant was born, or his present place of residence, where they otherwise correspond with the forms provided for in the coal land circular.

Mosley, In re, 6 L. D. 620.

B. ADVERSE CLAIM FILED BY AGENT—VERIFICATION.

An agent or attorney in fact who verifies the adverse claim must distinctly swear that he is such agent or attorney and accompany his affidavit by proof of such fact and must make such verification within the land district where the mineral claim is situated.

Circular, In re, 1 L. D. 685.

This amended act is not retroactive and can not therefore affect proceedings had prior to its approval.

Circular, In re, 1 L. D. 685.

Under this amendatory act the oath supporting an adverse claim may be made by a duly authorized agent or attorney in fact of an adverse claimant.

Mattes v. Treasury Tunnel, Min., etc., Co., 33 L. D. 553, p. 555.

This act permits an adverse claim to be verified by the oath of a duly authorized agent or attorney in fact of the adverse claimant, and the rules and regulations of the Department require such agent or attorney in fact to swear distinctly that he is such and accompany his affidavit with proof thereof; but the failure to comply with this technical requirement is a mere irregularity and will not defeat the right of a claimant to have a controversy settled by the appropriate tribunal where he has complied with the statute.

Brown v. Bond, 11 L. D. 150, p. 152.

This act does not state where the agent of the adverse claimant may make the oath to such adverse claim, nor does it designate any officer who may administer the oath, and for authority in this respect resort must be had to section 2335 of the Revised Statutes, and the general provision that affidavits must be made before any officer authorized to administer oaths within the land district is of general application and embraces all affidavits under the mining laws except where authority for their execution is otherwise specifically given.

Mattes v. Treasury Tunnel, Min., etc., Co., 34 L. D. 314, p. 316.

This act gives power to any duly authorized agent or attorney in fact cognizant of the facts stated in an adverse claim to make the required oath, but the oath to an adverse claim by the president of a corporation organized under the laws of Colorado, but sworn to by him in Louisville, Ky., does not meet the requirement of this act.

Louisville Gold Min. Co. v. Hayman Min. & Tunnel Co., 33 L. D. 680, p. 682.

The act of an officer of a private corporation in the matter of the verification of an adverse claim is not the act of an agent as distinguished from that of the corporation itself, and the corporation in such matter may act through its officers.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 101.

AMENDMENT 3.

36 Stat. 459, June 7, 1910.

See section 163, Alaska Compiled Laws, p. 879.

SECTION 2327, REVISED STATUTES.

The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

This section is the same as section 8, act of May 10, 1872 (17 Stat. 91, p. 94), p. 690. See 33 Stat. 545, p. 505.

A. SURVEY AS PART OF PATENT.

B. LODGE CLAIMS—SURVEYS AND DESCRIPTIONS.

C. DESCRIPTIONS—MONUMENTS CONTROL.

D. AMENDMENT TO SECTION 2327 R. S., p. 505.

A. SURVEY AS PART OF PATENT.

Surveys of town sites and mining claims are made under public oath and are therefore official surveys of the United States, and when patented such surveys are an official part of the patent and may then be said to be public surveys of the United States within the meaning of this statute requiring the survey of a mining claim to be connected with such public surveys.

McCarthy, In re, 14 L. D. 105, p. 108.

The rule that a patent is conclusive evidence as to the limits of a location and can not be assailed by showing that its actual boundaries were different from those described in the patent is subject to the qualification that where there is variance between the calls of the patent for courses and distance and the monument specified therein, the latter control, where they are clearly ascertained.

Sinnott v. Jewett, 33 L. D. 91, p. 95.

See Drogheda & West Monroe Extension Lode Min. Claims, In re, 33 L. D. 183.

B. LODGE CLAIMS—SURVEYS AND DESCRIPTIONS.

The mining laws make special provision for the survey of lode mining claims not on surveyed lands or which can not be conformed to legal subdivisions.

Mary Darling Placer Claim, In re, 31 L. D. 64, p. 66.

This section expressly provides that lode mining claims need not conform to the public surveys.

Washington v. Ross, 55 Wash. 242, p. 244.

C. DESCRIPTIONS—MONUMENTS CONTROL.

In locating mines courses and distances must give way to established monuments.

McKey, In re, 3 C. L. O. 50.

Philadelphia Lode Claimants v. Pride of the West Claimants, 3 C. L. O. 82.

Where a locator establishes monuments at the corner of his mining claim at the time of location and makes record of such location, the boundaries of his claim will be established by such monuments.

McKey, In re, 3 C. L. O. 50.

The existence of natural or fixed objects within the meaning of the statute and the sufficiency of the description of the mining claim are questions of fact to be determined as other questions of fact.

Slothower v. Hunter, 15 Wyo. 189, p. 200.

See Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159.

D. AMENDMENT TO SECTION 2327, REVISED STATUTES.

AMENDMENT 1.

33 Stat. 545, April 23, 1904.

AN ACT To amend section 2327 of the Revised Statutes of the United States, relating to lands.

Be it enacted, etc., That section 2327 of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

"SEC. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto."

A. AMENDATORY ACT.

1. CONSTRUCTION AND APPLICATION.
2. SECOND PATENT NOT GRANTED WITHOUT NOTICE.

1. CONSTRUCTION AND APPLICATION.

The amendatory act of April 23, 1904 (33 Stat. 545), is a part of the general mining laws and should be construed if possible to harmonize with the other sections of such laws, and is intended to prescribe the rule or guide whereby to determine the subject matter of mineral patents or the particular tract actually conveyed by any such patent wherever the question will arise, and the provisions of this section in nowise modify or affect any requirement of the mining statutes with respect to notice of an application for a patent, nor are they intended to have the effect to cure or remedy any defect or irregularity in the notice of patent proceedings.

Peck, In re, 34 L. D. 682, p. 684.

2. SECOND PATENT NOT GRANTED WITHOUT NOTICE.

Where no notice has been published describing the claim as it is actually located on the ground, the Land Department would not be warranted to issue a patent therefor in lieu of one formerly issued without first requiring posting and publication of proper notice as required by law in order to give possible adverse claimants an opportunity to protect and assert their rights.

Peck, In re, 34 L. D. 682, p. 684.

SECTION 2328, REVISED STATUTES.

Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the 10th day of May, 1872.

This section is the same as that part of section 9 following the repealing sentence of the act of May 10, 1872 (17 Stat. 91, 94), p. 680.

A. SCOPE AND APPLICATION OF SECTION.

This section does not reserve to the locator of a mining claim any of the provisions of the act of July 26, 1866, on the theory that such locator has a vested right which Congress can not limit or vary.

Lakin v. Roberts, 54 Fed. 461, p. 462. .

This and the preceding sections relate to mineral lodes or veins and fix the amount or quantity of land which may be acquired under any one claim the maximum of which is 1,500 feet along its length and 300 feet in width on each side, subject to local statutes and the rules and regulations of miners.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 693.

SECTION 2329, REVISED STATUTES.

Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent; under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

This section is the same as the first sentence of section 12, act of July 9, 1870 (16 Stat. 217), p. 670.
See 27 Stat. 348, Stone lands taken as placer claims, p. 1328; 29 Stat. 526, Oil lands taken as placer claims, p. 1043; 31 Stat. 745, Saline lands taken as placer claims, p. 1213.

A. PLACER CLAIMS.

B. NATURE AND FORMS OF DEPOSITS, p. 517.

C. APPLICATION FOR PLACER PATENT, p. 521.

D. VEINS AND LODES WITHIN PLACER LIMITS—OWNERSHIP AND RIGHTS, p. 523.

E. PATENT FOR PLACER CLAIM—FORCE AND EFFECT, p. 524.

A. PLACER CLAIMS.

1. FORCE AND EFFECT OF SECTION.
2. DEFINITION.
3. ACQUISITION OF PLACER GROUND.
4. APPLICATION OF LODE LAWS TO PLACER CLAIMS.
5. LANDS SUBJECT TO PLACER LOCATION—MINERAL CHARACTER.
6. INSUFFICIENT PROOF OF MINERAL CHARACTER.
7. DISCOVERY ESSENTIAL TO PLACER LOCATION.
8. NUMBER OF DISCOVERIES REQUIRED.
9. BOUNDARIES NOT REQUIRED TO BE MARKED.
10. EXCESSIVE LOCATION—EXCLUDING DISCOVERY POINT.
11. SURFACE LINES ON EXISTING LOCATIONS—EFFECT.
12. LOCATIONS CONFORMING TO PUBLIC SURVEYS.
13. IRREGULAR LOCATION—LOCATOR NOT PROTECTED.
14. RELOCATION.
15. RECORD NOT REQUIRED.
16. POSSESSORY RIGHTS.
17. UNPATENTED LOCATION—EFFECT.
18. LOCATIONS ON STATE AND SCHOOL LANDS—EFFECT.
19. TOWN-SITE CLAIMANTS—CONFLICTING RIGHTS.

1. FORCE AND EFFECT OF SECTION.

The provisions of this section are mandatory and must be strictly complied with.

Worthen v. Sidway, 72 Ark. 215, p. 222.

See North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.

Erwin v. Peregó, 93 Fed. 608.

The effect of this section is to declare that the circumstances and conditions under which vein or lode claims may be entered and patented shall be likewise applicable to placer claims.

Carney v. Arizona Gold Min. Co., 65 Cal. 40, p. 41.

The placer mining laws were not intended to be a catch-all system of taking public lands and allowing parties to play fast and loose to suit their own caprice.

Clark v. Ervin, 17 L. D. 550, p. 552.

The circumstances, conditions, and proceedings referred to are thus set forth in all the preceding sections beginning with section 2318, and include discovery, citizenship, marking of the boundaries on the ground, and the performance of the representation work.

Donnelly v. United States, 228 U. S. 243, p. 266.

2. DEFINITION.

By the term "placer mining claim" is meant ground within well-defined boundaries containing mineral in its earth, sand, or gravel, ground that includes valuable deposits of mineral not in place, nor fixed in rock, but which are in a loose state, and that may usually be collected by washing or amalgamation without milling.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 836.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 484.

See *United States v. Iron Silver Min. Co.*, 128 U. S. 673, p. 679.

Northern Pac. R. Co. v. Soderberg, 188 U. S. 526, p. 532.

1. A placer claim is a place near the bank of a river where gold dust is found.
2. A placer claim is a gravelly place where gold is found, especially by the side of a river or in the bed of a mountain torrent.

Gregory v. Pershbaker, 73 Cal. 109.

Placers are superficial deposits which occupy the beds of ancient rivers or valleys and may be held and worked in accordance with local mining laws adopted and enforced in the mining district where they are located.

Conlin v. Kelly, 12 L. D. 1, p. 3.

Strang v. Ryan, 46 Cal. 33.

Moxon v. Wilkinson, 2 Mont. 421.

The common understanding of the term "placer" is deposits of debris or wash here and there upon the earth's surface valuable as a "placer" deposit because carrying gold, but Congress has enlarged upon this understanding of the term and included all deposits excepting quartz or other rock in place.

Montague v. Dobbs, 9 C. L. O. 165, p. 166.

See *Stevens v. Williams*, 23 Fed. Cas. 40.

This section extends and enlarges the signification commonly given to "placer claims," and makes such locations include all forms of deposit, excepting quartz veins or other rock in place.

Freezer v. Sweeney, 8 Mont. 508, p. 513.

Claims usually called placers are expressly declared to include all forms of deposit except veins of quartz or other rock in place:

Stevens v. Williams, 23 Fed. Cas. 40.

Montague v. Dobbs, 9 C. L. O. 165.

Gregory v. Pershbaker, 73 Cal. 109, p. 115.

Bay v. Oklahoma Southern Gas, etc., Co., 13 Okla. 425, p. 429.

3. ACQUISITION OF PLACER GROUND.

The act of July 26, 1866 (14 Stat. 251), was amended by adding this section providing that claims usually called placers, including all forms of deposit, excepting veins of quartz or other rock in place, could be entered and patented.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 204.

The location and acquisition of placer mining ground is the same whether the mineral it contains be gold, silver, quicksilver, or petroleum.

Gird v. California Oil Co., 60 Fed. 531, p. 541.

This section authorizes citizens of the United States to acquire title to placer mines and lands containing deposits of rock and other substances commercially valuable as commodities.

Bevis v. Markland, 130 Fed. 226, p. 227.

This and the two succeeding sections provide for placer mining locations and the segregation of mineral land from agricultural land.

Yard, In re, 38 L. D. 59, p. 62.

This section contains no requirement as to the particular nature or character of any location authorized under this section, but groups them all under the general appellation of "placer claims."

Freezer v. Sweeney, 8 Mont. 508, p. 514.

A placer location is a location in accordance with the statute of a tract of land for the mineral bearing or other valuable deposits upon it or within it that are not found within lodes or veins in rock in place, and is a claim of a tract of land for the sake of the loose deposits on or near its surface.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 204.

See *Clipper Min. Co. v. Eli Min., etc., Co.*, 194 U. S. 220, p. 228.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 836.

At the time of the enactments of the mining laws, Congress evidently understood that a lode is a vein containing ore and disposed of the placers proper and all forms of mineral deposited not of the character mentioned in section 2320, Revised Statutes, as placers, and these two sections should be construed together, and the phrase "or other valuable deposits," as used in section 2320, and the exception, "quartz or other rock in place," in this section mean rock valuable for deposits of mineral.

Montague v. Dobbs, 9 C. L. O. 165, p. 166.

Congress has always recognized the distinction between lodes or veins of quartz and placer claims and a possessor of the former could procure title many years before it was legal to grant a patent for the latter; but the act was amended by providing that placer claims, including all forms of deposit, excepting veins of quartz or other rock in place, should be subject to entry.

Moxon v. Wilkinson, 2 Mont. 421, p. 425.

Montana Coal, etc., Co. v. Livingston, 21 Mont. 59, p. 69.

Unless a vein or lode is metalliferous, or valuable because carrying the minerals named in section 2320, Revised Statutes, location can be made under this section.

Montague v. Dobbs, 9 C. L. O. 165, p. 166.

4. APPLICATION OF LODGE LAWS TO PLACER CLAIMS.

Placer claims may be entered upon similar proceedings as those provided for vein or lode claims.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 694.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 678.

- Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220.
 Chrisman v. Miller, 197 U. S. 313, p. 320.
 Donnelly v. United States, 228 U. S. 243, p. 265.
 Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 256.
 Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 97.
 San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 835.
 Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 483.
 Overgaard v. Westerberg, 3 Alaska 168, p. 171.
 Cascaden v. Bortolis, 3 Alaska 200, p. 205.
 Clark v. Ervin, 17 L. D. 550, p. 552.
 Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 251.
 Suesenbach v. First National Bank, 5 Dak. 477, p. 499.

The acts required to be performed in order to complete a valid location applicable to placer mining claims are the same as required in lode locations.

McCann v. McMillan, 129 Cal. 350, p. 354.

Placer claims are subject to entry and patent under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims, and this means according to local customs and rules of miners in the mining districts so far as applicable.

Strickland v. Commercial Min. Co., 55 Oreg. 48, p. 51.

The provisions that placer claims shall be subject to entry and patent under like circumstances and conditions as those for veins or lodes means that discovery of mineral and appropriation are the sources of right and discovery is a prerequisite in either case to a valid location.

Ferrell v. Hoge, 18 L. D. 81, p. 85.

See Erhardt v. Boaro, 113 U. S. 527, p. 537.

O'Reilly v. Campbell, 116 U. S. 418.

United States v. Iron Silver Min. Co., 128 U. S. 673.

This and the two sections following provide that placer mining claims, including all forms of deposit excepting veins of quartz or other rock in place, shall be subject to entry and patent the same as vein or lode claims, but with wholly different provisions as to extralateral rights, area, survey, and price.

Harry Lode Min. Claims, In re, 41 L. D. 403, p. 406.

5. LANDS SUBJECT TO PLACER LOCATION—MINERAL CHARACTER.

To constitute mineral land it must be land which it will pay to mine by the usual modes of mining.

Royal K Placer, In re, 13 L. D. 86, p. 90.

See Caledonia Min. Co. v. Rowen, 2 L. D. 719.

Peirano v. Pendola, 10 L. D. 536.

Searle Placer, In re, 11 L. D. 441.

It is sufficient if the evidence by a fair preponderance does establish the presence of valuable mineral in a placer claim as a present fact.

Searle Placer, In re, 11 L. D. 441, p. 442.

See Peirano v. Pendola, 10 L. D. 536.

The mere fact that portions of the land contain particles of gold does not necessarily impress it with the character of mineral land, but the proof must show that it contains metal in such quantities as to make it available and valuable for mining purposes.

Royal K Placer, In re, 13 L. D. 86, p. 90.

Cleary v. Skiffich, 28 Colo. 362, p. 368.

See United States v. Reed, 28 Fed. 482.

Cutting v. Reininghaus, 7 L. D. 265.

Eting v. Potter, 17 L. D. 424.

Ah Yew v. Choate, 24 Cal. 562.

There must be a sufficient exploration of the ground to show a discovery of mineral and that the land contains gold or other valuable deposits in loose earth, sand, or gravel

which can be secured with profit, and proof of such facts will satisfy the demand of the Government as to the character of the land as placer ground.

Royal K Placer, In re, 13 L. D. 86, p. 89.

See *United States v. Iron Silver Min. Co.*, 128 U. S. 673.

Cutting v. Reininghaus, 7 L. D. 265.

It is sufficient to justify an entry of a placer claim where the evidence shows that there has not been discovered within the limits of the placer claim any lead or lode of metalliferous rock upon which a lode location can be based and that the land included within the placer is covered to a depth of at least 100 feet over the entire extent by wash and alluvium deposits containing gold in greater or lesser quantities.

Royal K Placer, In re, 13 L. D. 86, p. 87.

It is essential to the validity of a mining claim that the ground be mineral in character.

Zeiger v. Dowdy, 13 Ariz. 331, p. 334.

See *Chrisman v. Miller*, 197 U. S. 313.

Land returned as agricultural but being in the vicinity of valuable placer mines and containing valuable deposits of gold in the form of nuggets and that can be mined to advantage is subject to entry as a placer mine.

Conlin v. Kelly, 12 L. D. 1, p. 2.

See *Krohn*, In re, 10 C. L. O. 342.

While colors of gold may be found by panning in the dry bed of a creek in Alaska and miners upon such encouragement may be willing to further explore in the hope of finding gold in paying quantities, yet such prospects are not sufficient to show that the land is so valuable for mineral as to establish its character as mineral land in a contest between a mineral claimant and another claimant under other laws of the United States.

Steele v. Tanana Mines R. Co., 148 Fed. 678, p. 680.

See *Yard*, In re, 38 L. D. 59, p. 69.

6. INSUFFICIENT PROOF OF MINERAL CHARACTER.

Where it appears that continued prospecting for several years has failed to disclose in any appreciable quantity the presence of valuable placer minerals in the claim or to establish as a present fact the placer character of the land, it is not subject to patent.

Clipper Min. Co. v. Eli Min., etc., Co., 33 L. D. 660, p. 662.

Searle Placer, In re, 11 L. D. 441.

See *Clipper Min. Co. v. Eli Min., etc., Co.*, 194 U. S. 220.

Clipper Min. Co. v. Eli Min., etc., Co., 34 L. D. 401.

Proof that other lands in the vicinity contain oil is not sufficient to prove that the lands sought to be entered as mineral contain oil.

Roberts v. Japeon, 4 L. D. 60, p. 61.

See *Union Oil Co.*, In re (on review), 25 L. D. 351, p. 355.

Land almost wholly covered by a reservoir of water with but a small portion of land exposed, and where there is no proof that any mineral has ever been extracted from the land or that any work has been expended for such purposes, can not be patented as a placer claim.

Cheesman, In re, 2 L. D. 744.

7. DISCOVERY ESSENTIAL TO PLACER LOCATION.

To justify the location of a placer claim there must be such a discovery of mineral as gives reasonable evidence of the fact that it is valuable for such mining.

Creede & Cripple Creek, etc., Min., etc., Co. v. Uinta Tunnel, etc., Min., etc., Co., 196 U. S. 337, p. 349.

Chrisman v. Miller, 197 U. S. 313, p. 323.

Steele v. Tanana Mines R. Co., 148 Fed. 678, p. 679.

Northern Pac. R. Co. v. Marshall, 17 L. D. 545, p. 546.

Union Oil Co., In re, 25 L. D. 351, p. 358.

Tomera Placer Claim, In re, 33 L. D., 560, p. 561.

Garibaldi v. Grillo, 17 Cal. App. 540, p. 542.

See Miller v. Chrisman, 140 Cal. 440.

New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211, p. 213.

Discovery of mineral is a necessary prerequisite to the initiation of title to mineral lands upon the public domain, and until discovery is made a locator holds his possession by sufferance and not by right, and until such discovery he acquires no interest in the public domain and has nothing to convey.

Bakersfield Fuel & Oil Co., In re, 39 L. D. 460, p. 461.

In the absence of any intervening rights it is unimportant whether the discovery of mineral in the ground is made before or after the marking of its boundaries and the performance of these two acts in the absence of a statute requiring notice of a location to be recorded perfects the location, but both are essential to the validity of a mining location under the statutes.

Waskey v. Hammer, 170 Fed. 31, p. 35.

See Waskey v. Hammer, 223 U. S. 85.

It must be shown that mineral has been discovered within the ground claimed in addition to the ground originally located or that improvements have been made thereon, but it is not necessary that the improvements should be upon any particular part of the claim as the claim as amended is entity.

Lincoln Placer, In re, 7 L. D. 81.

Ferrell v. Hoge, 18 L. D. 81, p. 85.

There is no provision in the mining laws authorizing a locator by virtue of the discovery of mineral within the limits of one piece of ground to embrace in such location another and entirely different parcel lying wholly without such limits and having separate and distinct boundaries merely because the two parcels corner with each other, as such tracts in the administration of the mining laws must be considered as constituting separate and distinct parcels of ground.

Tomera Placer Claim, In re, 33 L. D. 560, p. 561.

While there must be some gold found within the limits of land located as a placer gold claim it can not be said in advance as a matter of law how much must be found in order to warrant the court or the jury in finding that there was in fact a discovery within the meaning of this section, but the question must be decided not only with reference to the gold actually found within the limits of the claim located, but also with regard to its situation in relation to other known valuable deposits of placer gold and its conformity to the general geological features of such deposits.

Lange v. Robinson, 148 Fed. 799, p. 803.

Charlton v. Kelley, 156 Fed. 433, p. 436.

It is a sufficient discovery to justify the location of a placer gold mining claim in Alaska where the pay streak is known to be either upon or near the bedrock and where such rock is from 125 to 150 feet below the surface where an experienced miner washes a few pans of the sediment deposited along the sides of a creek and finds in each small particles or colors of gold, and where placer gold in paying quantities has been found upon the bed rock on a tributary to such creek within a mile or so of the claim located.

Lange v. Robinson, 148 Fed. 799, pp. 801, 804.

See Charlton v. Kelley, 156 Fed. 433, p. 436.

Under this section a location of placer ground does not become valid until a discovery of mineral within the limits of the claim, and not a discovery of a vein or lode, but of placer mineral; but the strictness as to proof of discovery in lode claims is not required in placer claims.

Cook v. Johnson, 3 Alaska 506, p. 533.

8. NUMBER OF DISCOVERIES REQUIRED.

Whatever the area of a placer claim may be, but one discovery of minerals within the limits of the claim is required to precede its location; and if the claim be of 20 acres, located by one or more persons, or if it be of 160 acres by eight or more persons, it is but one location and but one discovery is required by the statute.

Union Oil Co., In re (on review), 25 L. D. 351, p. 359.

OVERRULING Union Oil Co., In re, 23 L. D. 222.

Ferrell v. Hoge, 18 L. D. 81.

See Yard, In re, 38 L. D. 59.

Where there has been a discovery of mineral on each 20 acres of a placer location, this will serve to except the whole location from school indemnity selection.

Quigley v. California, 24 L. D. 507, p. 508.

One discovery upon a placer claim, whether it be 20 acres or 160 acres, is sufficient to authorize a location thereof, but such discovery is not conclusive as to the mineral character of the entire tract, or that the entire tract can be acquired as appurtenant to the mineral deposits in a portion thereof.

Ferrell v. Hoge, 29 L. D. 12.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 300.

Miller v. Chrisman, 140 Cal. 440, p. 449.

The mining laws do not permit the entire acreage of a placer claim to be acquired as appurtenant to placer deposits, and while a single discovery may authorize the location of a placer claim, yet such single discovery does not conclusively establish the mineral character of the entire tract, and a discovery in a 40-acre subdivision does not authorize eight persons to embrace three other contiguous 40-acre subdivisions of nonmineral land in such claim.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 301.

See Ferrell v. Hoge, 29 L. D. 12.

Yard, In re, 38 L. D. 59.

The ground containing a placer mineral deposit is the subject of a placer location, but a single placer location does not impress the entire area that may be embraced within the location with a placer character if, as a matter of fact, a definite part thereof is nonplacer.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 302.

But one discovery of mineral is required to support a placer location and a placer claim can not legally be taken in such form as to make necessary two or more separate boundary lines defining separate limits.

Tomera Placer Claim, In re, 33 L. D. 560, p. 561.

See Union Oil Co., In re, 25 L. D. 351.

9. BOUNDARIES NOT REQUIRED TO BE MARKED.

The law does not require any staking or marking of the boundaries of a placer claim, but a placer claim when made on surveyed lands must conform to the legal subdivisions of such surveys.

Freezer v. Sweeney, 8 Mont. 508, p. 514.

This section does not mean that when a placer claim is located on surveyed land its boundaries shall be marked on the surface as required of a lode claim, as the public surveys are permanent and fixed, and any fractional part of a section can be readily found and its boundaries ascertained, and these are more stable and enduring than marking it by perishable and destructible stakes or monuments.

Reins v. Murray, 22 L. D. 409, p. 411.

This section simply provides where a mineral claimant shall run the lines of his claim, but it does not dispose of the requirement as to how the lines shall be marked or evidenced.

White v. Lee, 78 Cal. 593, p. 595.

10. EXCESSIVE LOCATION—EXCLUDING DISCOVERY POINT.

A valid placer mining location, though including a trifle in excess of the permitted amount, is invalidated and lost where on the readjustment of his lines in order to exclude such excess the locator purposely leaves outside of the relocated boundaries that part of the original location which embraces the place of the only discovery on which the original location was based and left the land therein open to location and subject to claims for new discovery.

Waskey v. Hammer, 223 U. S. 85.

Where lands adjacent to a placer claim are not themselves placer the laying of the lines of a placer location in conformity with the public surveys, which may be done to embrace tracts as small as 10 acres in area in square form, would not require the inclusion of such adjacent nonplacer land to such extent as to affect the validity of such placer location.

Roman Placer Min. Co., In re, 34 L. D. 260, p. 261.

See Hogan & Idaho Placer Min. Co., In re 34 L. D. 42.

11. SURFACE LINES ON EXISTING LOCATIONS—EFFECT.

The rule which permits a junior locator of a lode claim to place his end lines within the limits of a prior location has no application to placer locations, as in these latter the surface is the thing located and the possession of the surface is essential to mining operations, and in order to obtain the surface that is open to location it is not necessary to invade the surface of other claims or to place boundary lines thereon.

Stenfjeld v. Espe, 171 Fed. 825, p. 828.

See Grassy Gulch Placer Claim, In re, 30 L. D. 191.

Mary Darling Placer Claim, In re, 31 L. D. 64.

Rialto No. 2 Placer Min. Claim, In re, 34 L. D. 44.

The rule requiring placer claims located on surveyed lands to be described by legal subdivisions furnishes no authority in the location of placer claims upon unsurveyed lands for placing the lines of such a location upon previously patented lands.

Golden Chief "A" Placer Claim, In re, 35 L. D. 557, p. 558.

12. LOCATIONS CONFORMING TO PUBLIC SURVEYS.

The surveys for placer claims shall conform as nearly as possible to the congressional surveys and may include 20 acres of surface area; but when the location can not conform to the regular subdivisions it may be made as upon unsurveyed lands.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 694.

All placer mining claims located after May 10, 1872, must conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions thereof, and this rule applies whether the locations are upon surveyed or unsurveyed lands.

Miller Placer Claim, In re, 30 L. D. 225, p. 226.

Mitchell v. Hutchinson, 142 Cal. 404, p. 407.

Strickland v. Commercial Min. Co., 55 Oreg. 48, p. 51.

This and the following sections will not be construed as being limited to locations that shall conform to the public surveys in all cases, but extend to cases where it may be impracticable to so locate the claim, and the expression "as near as practicable"

is held to mean "as near as reasonably practicable," and in each case a sound discretion must be exercised in determining the question of practicability.

Rablin, *In re*, 2 L. D. 764.

Pearsall & Freeman, *In re*, 6 L. D. 227.

See Snow Flake Fraction Placer, *In re*, 37 L. D. 250, p. 251.

Whether a placer claim is located on surveyed or unsurveyed land the locator is required in either instance to do all the necessary acts to prove a location, but upon surveyed land the location shall be made to conform as nearly as practicable with the public land surveys, and aside from this there is no difference in locations on the two classes of lands.

Ferrell v. Hoge, 18 L. D. 81, p. 85.

This and section 2331 R. S. provide for ten-acre subdivisional surveys, and also contemplate cases where it is not practicable to conform the location to such subdivisional lines, but they do not limit such cases to those where there has been a prior appropriation of a part of the subdivision, but extend to cases where it may be impracticable to so locate a placer claim.

Rablin, *In re*, 2 L. D. 764.

13. IRREGULAR LOCATION—LOCATOR NOT PROTECTED.

The locators of a placer mining claim in Alaska who staked off their claim and marked the boundaries on the ground, showing a location 2 miles long and 660 feet wide, can not hold such ground as against another locator who in good faith and peaceably and neither clandestinely, nor fraudulently made an overlapping location, which did not interfere with the *pedis possessio* of the first locators and on which a discovery was made before a discovery was made by such first locators.

Hanson v. Craig, 170 Fed. 62, p. 65.

Vacating Hanson v. Craig, 161 Fed. 861, p. 863.

14. RELOCATION.

A placer mining claim may be relocated where the original boundaries are uncertain or not known, and for the purpose of making the boundaries conform to the legal subdivisions of the public survey.

Good Return Min. Co., *In re*, 4 L. D. 221.

An attempted relocation of a placer mining claim made according to the Government survey and for the alleged purpose of placing the same on record in the records of the proper county, is a good location of a placer claim, though there had in fact been no prior location.

Good Return Min. Co., *In re*, 4 L. D. 221, p. 225.

15. RECORD NOT REQUIRED.

Neither this nor any other section of the mining laws requires a record of a placer claim.

Freezer v. Sweeney, 8 Mont. 508, p. 514.

16. POSSESSORY RIGHTS.

The right to possession of a mining claim comes through a location, and such location can only be made by a citizen of the United States or one who has declared his intention to become such.

Lee Doon v. Tesh, 68 Cal. 43, p. 45.

The owner of a placer claim is entitled to all the mineral deposits contained therein, excepting the veins or lodes within the meaning of section 2320, R. S.

Freezer v. Sweeney, 8 Mont. 508, p. 515.

In placer mining land the surface is essential to its development as mining ground.

Conlin v. Kelley, 12 L. D. 1, p. 3.

Townsite of Deadwood, In re, 8 C. L. O. 18.

Persons who go upon or build upon land after the location of a placer mining claim are charged with notice of the fact of its location and are trespassers as against the placer location.

Ferrell v. Hoge, 18 L. D. 81, p. 83.

A homestead entryman acquires no right to the land embraced in his entry where it was previously located and occupied as a placer claim.

Piru Oil Co., In re, 16 L. D. 117, p. 119.

See Fort Maginnis, In re, 1 L. D. 552.

The construction of a dam or bulkhead across a canyon or ravine on unoccupied public lands for the purpose of impounding, and in and upon which the person so constructing such dam impounded and preserved a vast quantity of tailings, and over which he and his heirs exercised continuous acts of ownership, constitute sufficient acts of appropriation and location to confer the possessory right to such lands as a placer mining claim to the extent of the ground that was reserved and tailings covered, and that such acts constitute sufficient physical markings necessary to designate the ground or give notice to the world of the extent of the claim and to manifest the intention of the locator to claim and hold possession of the land for such purpose.

Ritter v. Lynch, 123 Fed. 930, p. 932-34.

In a contest between an applicant for land valuable for stone under the timber and stone act and an applicant as a placer claimant, it must be decided in favor of one having priority in the assertion of a legal claim.

Sheperd v. Bird, 17 L. D. 82, p. 84.

17. UNPATENTED LOCATION—EFFECT.

The fact that many years have elapsed since the original location of a placer claim and that no patent has been issued therefor does not affect its validity.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 224.

See Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 16.

A valid location, though unpatented, is a grant and the estate enjoyed is in the nature of an estate in fee, and it consists of an appropriation of land by the locator to the exclusion of all others, and a junior locator of a placer claim can not be permitted to lay his lines across a similar claim already located.

Stenfjeld v. Espe, 171 Fed. 825, p. 828.

18. LOCATIONS ON STATE AND SCHOOL LANDS—EFFECT.

A placer claim can not be located on lands conveyed by patent to the State of Colorado for improvement purposes.

Twin Lake Consol. Placer Min. Co., In re, 10 C. L. O. 292, p. 293.

Lands disposed of under this section before the grant to a State attached do not pass under such grant.

Gibson, In re, 21 L. D. 327, p. 328.

In the case of a contested entry of a mining claim located on school lands granted to a State, the question at issue is whether or not there exists upon the land, as a present fact, deposits of gold or other mineral in paying quantity, by which must be meant such quantities as in view of the physical difficulties to be overcome would justify mining.

Washington v. McBride, 18 L. D. 199, p. 202.

A placer entry made on lands chiefly valuable for ordinary building stone at a time when such entries were recognized by the Department as valid is excepted from a subsequent grant of school lands to a state and such an entry should be carried to patent.

Gibson, In re, 21 L. D. 327, p. 329.

Distinguishing South Dakota v. Vermont Stone Co., 16 L. D. 263.

19. TOWN-SITE CLAIMANTS—CONFLICTING RIGHTS.

This section prevents a town-site entry from carrying title to two classes of mining claims and it is sufficient if, in fact, the property is a known mine of gold, silver, cinnabar, or copper.

Callahan v. James, 141 Cal. 291, p. 293.

The previous location, entry, or patent of town site, while not conferring any right to the underlying veins or lodes, gives to the town site occupants surface rights to which those of the subsequent mineral claimants are necessarily subject.

Mandeville, In re, Copp Min. Lands 328, p. 329.

B. NATURE AND FORMS OF DEPOSITS.

1. GENERAL PROVISIONS.

2. PARTICULAR FORMS OF DEPOSITS.

a. DEPOSITS WARRANTING LOCATIONS.

b. DEPOSITS NOT WARRANTING LOCATIONS.

c. CALCIUM PHOSPHATE LODGE LOCATED AS PLACER— EFFECT.

1. GENERAL PROVISIONS.

By this section placer claims include all other forms of mineral deposits except veins of quartz or other rock in place.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 694.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 678.

All forms of mineral deposits, except veins of quartz or other rock in place, are subject to entry as placer mining claims.

Meiklejohn v. Hyde, 42 L. D. 144, p. 145.

The words "including all forms of deposit" in this section must be construed in the light of the declared general purpose of the mining act as a whole and depend for their meaning not only upon specific words but have reference to the expressions "all valuable mineral deposits" and "lands valuable for minerals" as used in other sections, and are intended to include all forms of mineral deposit of whatever kind or nature, and whether metallic or otherwise, excepting veins of quartz or other rock in place.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 243.

See Forsythe v. Weingart, 27 L. D. 680.

The comprehensive provisions of this and the succeeding section must be given reasonable effect and operation and can not be restricted by the enumeration of certain named metallic substances in other sections.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 243.

The words "or other valuable deposits" depend for their meaning not only on the specific words which they follow, but depend also upon and draw from the larger and more comprehensive expression "all valuable mineral deposits," as used in the preceding sections, and are intended to include all forms of mineral deposit of whatever

kind or nature, and whether metallic or otherwise, excepting veins of quartz or other rock in place.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 241.

Scientifically speaking petroleum is a mineral, and the same may be said of salts and phosphates and of clay containing alumina, and other substances in the earth, yet it does not follow that they come within the meaning of the mineral statutes.

Union Oil Co., In re, 23 L. D. 222, p. 229.

See Salt Bluff Placer, In re, 7 L. D. 549.

Southwestern Min. Co., In re, 14 L. D. 597.

Jordan v. Idaho Aluminum Min., etc., Co., 20 L. D. 500.

Deposits other than veins or lodes are subject to location and patent only under the law applicable to placer claims.

Henderson v. Fulton, 35 L. D. 652, p. 663.

It is not to be presumed that the Government intended to deprive citizens of the use of or the means of acquiring title to rock and stone for building purposes, and if land containing these materials could not be entered under this section, then there was no law at the time of this enactment authorizing title to such materials to be acquired.

Freezer v. Sweeney, 8 Mont. 508, p. 513.

The deposit here referred to means a deposit having some special value other than that of mere stone quarrying for general purposes.

Conlin v. Kelly, 12 L. D. 1, p. 2.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 240.

See Parks v. Hendsch, 12 L. D. 100.

Hayden v. Jamison, 16 L. D. 537.

Clark v. Ervin, 16 L. D. 122.

2. PARTICULAR FORMS OF DEPOSITS.

a. DEPOSITS WARRANTING LOCATION.

A deposit of asphaltum in lodes or veins in rock in place can not be secured as a placer claim under this section.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 408.

Building sand is valuable mineral within the meaning of this section.

Loney v. Scott, 57 Oreg. 378, p. 384.

Lands chiefly valuable for deposits of building stone but containing no veins of quartz or rock in place are subject to entry as placer claims.

Bennett, In re, 3 L. D. 116, p. 117.

Johnston v. Harrington, 5 Wash. 73, p. 78.

This section extends and enlarges the signification given to placer claims and makes such locations include all forms of deposit excepting quartz veins or other rock in place, and it embraces quarries of rock valuable for building purposes.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 241.

Contra Clark v. Ervin, 17 L. D. 550, p. 553.

Wheeler v. Smith, 5 Wash. 704.

See Forsythe v. Weingart, 27 L. D. 680.

This section is construed as embracing quarries of rock valuable for building purposes.

Freezer v. Sweeney, 8 Mont. 508, p. 513.

Prior to the act of August 4, 1892 (27 Stat. 348), there was no authority to locate and purchase lands chiefly valuable for building stone under the placer mining law.

Jamison v. Hayden, 15 L. D. 276.

Hayden v. Jamison, 24 L. D. 403.

Veins of clay and other nonmetalliferous mineral substances are subject to location the same as placer mining claims.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 239.
See *Montague v. Dobbs*, 9 C. L. O. 165.

Land containing fire clay or kaolin may be taken up under the law relating to placer mines.

Dobbs Placer Mine, In re, 1 L. D. 565, p. 569.
Clark v. Ervin (on review), 17 L. D. 550, p. 551.
Montague v. Dobbs, 9 C. L. O. 165, p. 166.
Montague v. Dobbs, 10 C. L. O. 88.
See *North Noonday Min. Co. v. Orient Min. Co.*, 1 Fed. 522.
Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.
Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Where land containing a deposit of limestone is sought to be entered as a placer claim it must appear affirmatively that the land is more valuable for the limestone than for agricultural purposes, or that the lands are not valuable for any other purpose than the one for which application is made.

Long v. Isaksen, 23 L. D. 353, p. 357.
See *Maxwell v. Brierly*, 10 C. L. O. 50.

Lands containing deposits of marble are subject to location and patent only under the laws applicable to placer mining claims.

Henderson v. Fulton, 35 L. D. 652, p. 664.
See *Palmer*, In re, 38 L. D. 294, p. 296.

The title of the Government to oil-bearing lands can only be acquired pursuant to the provisions of the mining laws relating to placer claims.

Gird v. California Oil Co., 60 Fed. 531, p. 532.
Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 572.
Union Oil Co., In re (on review), 25 L. D. 351, p. 356.

Lands chiefly valuable for the deposits of petroleum contained therein are mineral lands within the meaning of the mining laws and subject to location and entry as such, and may not be selected by a railroad company under its grant reserving and excepting "mineral lands."

Union Oil Co., In re (on review), 25 L. D. 351, p. 357.
Tulare Oil & Min. Co. v. Southern Pac. R. Co., 29 L. D. 269, p. 271.
McQuiddy v. California, 29 L. D. 181, p. 183.
Chrisman v. Miller, 197 U. S. 313, p. 320.
Cates v. Producers & Consumers Oil Co., 96 Fed. 7, p. 8.
Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 676.
Olive Oil & Dev. Co. v. Olmstead, 103 Fed. 568, p. 572.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 14.
Lange v. Robinson, 148 Fed. 799, p. 803.
Weed v. Snook, 144 Cal. 439, p. 440.
Berentz v. Belmont Oil Min. Co., 148 Cal. 577, p. 582.
New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211, p. 213; 92 Pac. 180.
McLemore v. Express Oil Co. 158 Cal. 559, p. 562.
Overruling Union Oil Co., In re, 23 L. D. 222.
See *Roberts v. Jepson*, 4 L. D. 60.
Rogers, In re, 4 L. D. 284.
Piru Oil Co., In re, 16 L. D. 117.
Dewey, In re, 9 C. L. O. 51.

Phosphate deposits existing in lands containing phosphate deposits not in the form of veins or lodes within walls of rock in place must be regarded as placer lands.

Phosphate Deposits, In re, 17 C. L. O. 75, p. 76.

Lands valuable for an extensive deposit of finely divided pumice or volcanic ash, known as silicate, possessing a positive and commercial value, and where the area in which such lands are situated is rough and broken and the surface generally of a

gravely nature, of little value for agricultural purposes, and such deposits locatable as a mining claim are not subject to disposition under the agricultural laws.

Bennett v. Moll, 41 L. D. 584, p. 586.

Land containing a deposit of sandstone of a superior quality for building and ornamental purposes and valuable only as a stone quarry may be entered as a placer claim under the general mining laws.

Van Doren v. Plested, 16 L. D. 508.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 241.

See Meiklejohn v. Hyde, 42 L. D. 144, p. 146.

Land chiefly valuable for deposits of stone possessing great commercial value for the ornamentation of buildings and comparatively worthless for agricultural purposes may be entered under the placer mining laws.

McGlenn v. Wienbroer, 15 L. D. 370, pp. 373, 374.

Zimmerman v. Brunson, 39 L. D. 310, p. 312.

Bennett, In re, 3 L. D. 116.

Lands whose chief value consists in a limestone ledge and the stone of which is used as a flux in neighboring smelting furnaces and for manufacturing and the making of lime are subject to entry under the mineral laws where such lands are in a mineral belt and no other stone will serve as a flux in a furnace for making lime.

Conlin v. Kelly, 12 L. D. 1, p. 2.

See Maxwell v. Brierly, 10 C. L. O. 50.

Stone suitable for making lime may properly be entered as placer ground.

Shepard v. Bird, 17 L. D. 82, p. 84.

See Maxwell v. Brierly, 10 C. L. O. 50.

The department is not to be understood as deciding that public land containing zinc are subject to entry under the placer mining laws, as the question is not properly before the department.

Rhodes v. Treas., 21 L. D. 502, p. 503.

b. DEPOSITS NOT WARRANTING LOCATIONS.

Land embraced in an entry and described as located for the valuable deposit of brick clay can not be properly classified as mineral land and is not subject to entry as a placer claim under the mining laws.

Dunluce Placer Mine, In re, 6 L. D. 761, p. 762.

King v. Bradford, 31 L. D. 108.

Zimmerman v. Brunson, 39 L. D. 310, p. 313.

Lands containing a stratum of bituminous sandstone or shale some 6 feet in thickness, and from which at several points a small quantity of oil seeps, is not sufficient to impress a mineral character on the land, and does not constitute a sufficient discovery to support a mining location.

Southwestern Oil Co. v. Atlantic & Pac. R. Co., 39 L. D. 335, p. 336.

Butte Oil Co., In re, 40 L. D. 602, p. 606.

A deposit of gravel and sand which can be used with cement in the manufacture of concrete to be used in the construction of buildings, and which makes the land more valuable because of such deposit, does not make such land mineral in character and subject to entry as a placer mining claim.

Zimmerman v. Brunson, 39 L. D. 310, p. 313.

Lands chiefly valuable for a stone quarry or stone for general building purposes are not subject to entry under the mining laws.

Conlin v. Kelly, 12 L. D. 1, p. 2.

Clark v. Ervin, 16 L. D. 122.

South Dakota v. Vermont Stone Co., 16 L. D. 263.

See Van Doren v. Plested, 16 L. D. 608.

Stone useful for general building purposes only did not make the land subject to appropriation under the mining laws prior to the passage of the act of August 4, 1892 (27 Stat. 348).

McGlenn v. Wienbroer, 15 L. D. 370, pp. 373, 374.

Conlin v. Kelly, 12 L. D. 1.

Minnekahta Stone Mine, In re, 15 L. D. 256.

Clark v. Ervin, 17 L. D. 550.

Wheeler v. Smith, 5 Wash. 704.

Lands containing tin ore which appears in croppings on the surface of the ground and is also found in ledges and veins beneath the surface can not be entered or patented as placer claims.

Grosfield v. Nigger Hill Consol. Min. Co., 14 L. D. 685, p. 687.

C. CALCIUM PHOSPHATE LODGE LOCATED AS PLACER—EFFECT.

An attempted location as a placer claim of calcium phosphate or rock phosphate in place having a dip and strike firmly fixed in the mass of a mountain and occurring between strata of limestone, chert, and shale, where the line of demarcation between such phosphate rock and the wall rock of limestone or shale is well-defined and distinct, and where the distinction between such phosphate rock, having a commercial value, and the wall rock, having no commercial value, is readily determined by visual inspection, is invalid and is not an appropriation or segregation of the ground, but the ground within the limits of such attempted location remains public and unoccupied mineral ground, and any third person may make peaceable entry thereon and locate as a lode claim such deposit of calcium phosphate or rock phosphate.

San Francisco Chemical Co. v. Duffield, 201 Fed. 830, p. 835.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 486.

See Webb v. American Asphaltum Min. Co., 157 Fed. 203.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.

Thallman v. Thomas, 111 Fed. 277.

Overruling Duffield v. San Francisco Chemical Co., 198 Fed. 942.

C. APPLICATION FOR PLACER PATENT.

1. SUFFICIENCY OF APPLICATION—PRACTICE.
2. PERFORMANCE OF STATUTORY REQUIREMENTS—REPRESENTATION WORK.
3. DESIGNATION OF USE OF CLAIM—VALUE ENHANCED BY TIMBER.
4. QUANTITY OF LAND INCLUDED.
5. CITIZENSHIP OF APPLICANT FOR PATENT.
6. ADVERSE PROCEEDINGS.
7. ACCEPTANCE OF APPLICATION—EFFECT.

1. SUFFICIENCY OF APPLICATION—PRACTICE.

An application for a patent for a placer claim must sufficiently identify the lands included as to enable the department to accurately describe the same, and if not on surveyed lands then there must be an official survey of the particular part claimed.

Chicago Placer Min. Claim, In re, 34 L. D. 9, p. 11.

An application for patent for a placer claim must show that the claim is all placer ground and must be corroborated by accompanying proofs, and if of mixed placers and lodes it should be so shown with a description of all known lodes within the boundaries of the claim.

Circular, 1 L. D. 685, p. 686.

The first care in recognizing an application for patent upon a placer claim must be exercised in determining the exact classification of the lands which are sought to be acquired as such.

Searle Placer, *In re*, 11 L. D. 441, p. 442.

In an application for a placer claim containing a known vein or lode, a specific description must be furnished as to each lode intended to be claimed and all known lodes are by the silence of the locator excluded by law.

Circular, 1 L. D. 685, p. 686.

Under this section an application for patent for mining claim under former laws may be prosecuted to a final decision in the General Land Office, but until entry there is nothing to come before the Land Office for adjudication or adjustment.

Seaton Min. Co. v. Davis, *Copp's Min. Lands* 296, p. 298.

2. PERFORMANCE OF STATUTORY REQUIREMENTS—REPRESENTATION WORK.

The locator of a placer claim who has complied with all the proceedings essential for the issuance of a patent is the equitable owner of the mining ground and the Government holds it in trust for him.

Piru Oil Co., *In re*, 16 L. D. 117, p. 119.

Dahl v. Raunheim, 132 U. S. 260, p. 262.

While the other sections of the mining statutes might indicate that the performance of the annual assessment work apply to lode locations only, yet this section removes all doubt and shows that the performance of annual work is required upon placer as well as lode claims.

Carney v. Arizona Gold Min. Co., 65 Cal. 40, p. 41.

The requirement that the claimant shall furnish proof of the expenditure of \$500 on a claim is just as necessary and just as applicable in the case of a placer claim as in the case of a lode claim, and the object is to evidence the good faith of the claimant and to demonstrate the mineral character of the land, but the reason for requiring the proof of such expenditures to be by certificate of the surveyor general in the case of a lode claim does not apply to a placer claim located upon surveyed land according to legal subdivisions.

Draper v. Wells, 25 L. D. 550, p. 555.

3. DESIGNATION OF USE OF CLAIM—VALUE ENHANCED BY TIMBER.

The law does not require the owner of a placer claim to designate, in his application for a patent, the particular use or character of the claim, provided it is such as is contemplated by this section, and any words of description defining the use or purpose of its location in no way abridge the rights of the locator.

Freezer v. Sweeney, 8 Mont. 508, p. 515.

An application for patent for a placer claim is not to be denied on the ground that the applicant in the location of his claim considered its accessibility to valuable timber or water advantageous to the operation of the claim and adding materially to its value as a location.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 684.

United States v. Lavenson, 206 Fed. 755, p. 763.

4. QUANTITY OF LAND INCLUDED.

An application for patent for a placer claim may contain and describe as a single tract any number of contiguous claims without limit as to the number of acres and a single patent may be issued covering the entire area.

Smelting Co. v. Kemp, 104 U. S. 636, p. 653.

Good Return Min. Co., *In re*, 4 L. D. 221, p. 224.

Rogers, In re, 4 L. D. 284.
 Champion Min. Co., In re, 4 L. D. 362.
 Overruling Downey v. Rogers, 2 L. D. 707.

The circular instructions of July 6, 1883, providing that no application will be received or entry permitted if it embraces more than one location is erroneous and overruled.

Good Return Min. Co., In re, 4 L. D. 221.
 Champion Min. Co., In re, 4 L. D. 362, p. 363.
 Overruling Downey v. Rogers, 2 L. D. 707.

Lands not included in an application for patent for a placer claim and in the publication and posted notice, and other proceedings thereof, can not be embraced in the entry.

Roman Placer Min. Co., In re, 34 L. D. 260, p. 261.

5. CITIZENSHIP OF APPLICANT FOR PATENT.

Placer claimants, in order to procure patents for mining claims, must, like locators of lode claims, be citizens, or must have declared their intention to become such.

Lee Doon v. Tesh, 68 Cal. 43, p. 49.

6. ADVERSE PROCEEDINGS.

By this section all proceedings on adverse claims are made applicable to placer claims.

Becharts v. Sizer, 12 C. L. O. 166.

This section makes all the proceedings relating to adverse claims, in connection with lode locations, applicable to placer claims, except as otherwise provided in section 2333, R. S.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, 677.

7. ACCEPTANCE OF APPLICATION—EFFECT.

The acceptance and filing of a mineral application is the basis of the entry provided for in this section; and it follows that an action appealed from which permits the filing without the required hearing is equivalent to a decision that the land is open to placer entry and even in the absence of competent evidence.

Hooper v. Ferguson, 2 L. D. 712, p. 713.

A judgment of the department rejecting an application for patent does not necessarily declare a placer location void, nor does such judgment affect the possessory rights of a locator.

Clipper Min. Co. v. Searl, 29 L. D. 137.
 Beals v. Cone, 27 Colo. 473, p. 483.
 Clipper Min. Co. v. Eli Min., etc., Co., 29 Colo. 377, p. 382.

D. VEINS AND LODS WITHIN PLACER LIMITS—OWNERSHIP AND RIGHTS.

Veins of quartz or other rock in place known to exist within the limits of a placer claim are expressly excepted from placer locations and patents therefor.

Mt. Rosa Min., etc., Co. v. Palmer, 26 Colo. 56, p. 59.

A placer entry made for the purpose of securing title to lodes and veins known to exist in the land included in the entry is in violation of law and will be canceled.

Grosfield v. Nigger Hill Consol. Min. Co., 14 L. D. 685, p. 687.

A placer patent for land including a known lode not specifically described and excluded conveys all the land and forms no exception to the rule that the issuance of

the patent terminates the jurisdiction of the department over the land covered, and the patent can be invalidated only by proceedings in court.

Pike's Peak Lode, In re, 14 L. D. 47, p. 49.

Pike's Peak Lode, In re, 10 L. D. 200.

No one may go upon a prior valid placer location to prospect for unknown lodes and acquire title to lode claims discovered and located as a result thereof within the placer limits, unless the placer owner has abandoned his claim, waives the trespass, or by his conduct is estopped to complain of it.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 230.

Clipper Min. Co. v. Eli Min., etc., Co., 29 Colo. 377.

A placer mining claim may be located on lands on which lode claims have been located and abandoned.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 681.

Adams v. Quijada, 25 L. D. 24 p. 27.

A placer claimant can not follow a vein or lode beyond the surface boundaries of his claim extended vertically downward and the converse of this is equally true that any vein or lode in adjacent ground stops at the point of its intersection with the boundary of the placer, when its existence was not known at the time of the placer entry.

Woods v. Holden, 26 L. D. 198, p. 205.

A person has no right to enter upon a valid existing placer claim for the purpose of discovering and locating and perform the necessary acts to perfect a lode location thereon.

Duffield v. San Francisco Chemical Co., 205 Fed. 490, p. 485.

E. PATENT FOR PLACER CLAIM—FORCE AND EFFECT.

A patent to a placer claim conveys a fee simple title to the land itself.

Townsite of Leadville, In re, 9 C. L. O. 71.

See Townsite of Deadwood, In re, 8 C. L. O. 153.

A patent for a placer claim should contain a reservation to the effect that should any vein or lode of quartz or other rock in place be claimed or known to exist within the premises described, at the date of the patent, it is expressly excepted and excluded therefrom.

Sanderson, In re, 7 C. L. O. 100, p. 101.

It has not been the practice of the Land Department to insert in patents for placer claims a clause excepting and excluding town property rights upon the surface, including buildings, structures, or municipal improvements, for the reason that the surface is required for the full enjoyment of the land for either the placer or town owner.

Townsite Clause, In re, 5 L. D. 256.

See Kemp v. Starr, 5 C. L. O. 130.

Townsite of Deadwood, In re, 8 C. L. O. 153.

Dotson v. Arnold, 8 L. D. 439.

A patent for a placer mining claim does not carry by implication the right to the unappropriated waters of any stream bordering upon or traversing such claim, and such claims must be construed and have effect according to the law of the State in which the claims are situated, in so far as the rights and incidents of riparian proprietorship are concerned.

Snyder v. Colorado Gold Dredging Co., 181 Fed. 62, p. 68.

The fact that mining claims for which application for a patent was made were placer mining claims instead of quartz mining claims would not preclude the owner thereof from obtaining a single patent for several such claims purchased and owned by him, as the Government could not be injured by any deception or false representation since the price per acre for quartz mining claims is greater than that for placer claims.

Peabody Gold. Min. Co. v. Gold Hill Min. Co., 111 Fed. 817, p. 821.

The patentee of a placer mining claim takes it subject to the easement therein which had been acquired under the congressional enactment by the construction and use of a ditch used in diverting and carrying water while such claim was still a part of the public land, but such easement extended only to the maintenance and use of the ditch substantially as then constructed for the purpose of diverting and carrying the volume of water theretofore appropriated and gave no right to enlarge the ditches or to change its location or to use it in diverting and carrying a largely increased volume of water.

Snyder v. Colorado Gold Dredging Co., 181 Fed. 62, p. 70.

See McGuire v. Brown, 106 Cal. 660.

Vestal v. Young, 147 Cal. 715.

Clear Creek Land, etc., Co. v. Kilkenny, 5 Wyo. 38.

A person who has constructed some ditches on a tract of land but has brought no water thereon, and the work consists mainly in making a considerable number of shafts with a view to the discovery of lodes and not for the purpose of placer development, is not entitled to a patent for a placer claim.

Searle Placer, In re, 11 L. D. 441, p. 442.

See Clipper Min. Co. v. Searl, 29 L. D. 137, p. 139.

SECTION 2330, REVISED STATUTES.

Legal subdivisions of 40 acres may be subdivided into 10-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than 10 acres each, may make joint entry thereof; but no location of a placer claim, made after the 9th day of July, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

This section is the same as the latter half of section 12, act of July 9, 1870 (16 Stat. 217), p. 670.

- A. CONSTRUCTION AND APPLICATION OF SECTION.
- B. DISCOVERY ON PLACER CLAIMS, p. 528.
- C. LOCATIONS ON SURVEYED AND UNSURVEYED LANDS, p. 530.
- D. RELOCATION, p. 531.
- E. AGRICULTURAL AND MINERAL LANDS, p. 531.
- F. ASPHALTUM AND PHOSPHATE LANDS AS PLACER LOCATIONS, p. 532.
- G. CONSOLIDATION OF CLAIMS, p. 532.

A. CONSTRUCTION AND APPLICATION OF SECTION.

- 1. LOCATION BY INDIVIDUAL—QUANTITY.
- 2. LOCATION BY ASSOCIATION—QUANTITY.
- 3. LOCATION BY DUMMIES.
- 4. POSSESSION OF ASSOCIATION CLAIM.
- 5. LOCATION BY CORPORATION—QUANTITY.

1. LOCATION BY INDIVIDUAL—QUANTITY.

See sec. 2331, p. 534.

In describing a placer location there must be a natural object or permanent monument by which the claim can be identified.

Green v. Gavin, 10 Cal. App. 330, p. 335.
See Fuller v. Harris, 29 Fed. 814.

In the administration of the placer mining law a literal interpretation may be given to the provision limiting the number of acres that may be included in a single location without working injustice to any claimant thereunder.

Chicago Placer Min. Claim, In re, 34 L. D. 9, p. 11.

This section regulates the quantity of land that may be embraced in a placer mining claim.

Price v. McIntosh, 1 Alaska 286, p. 293.

This section, following the mining act of May 10, 1872 (17 Stat. 91), limits a placer location to no more than 20 acres for each individual claimant.

Smelting Co. v. Kemp, 104 U. S. 636, p. 651.
Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 657.
Poire v. Wells, 6 Colo. 406, p. 412.
See Yard, In re, 38 L. D. 59.

This section does not permit one person to enter more than 20 acres of placer ground by one location by the device of using the names of employees or friends as locators and himself paying the expenses of such location.

Durant v. Corbin, 94 Fed. 382, p. 384.

See *Gird v. California Oil Co.*, 60 Fed. 531, p. 545.

Under this section an individual can not acquire more than 20 acres of mining ground by one location, but an association of persons may make joint locations of not to exceed 160 acres.

Nome & Sinook Co. v. Snyder, 187 Fed. 385, p. 387.

A local custom of miners in the Cape Nome mining district of Alaska to the effect that placer claims shall be located 1,320 feet by 660 feet is void in that it contemplates that every placer claim shall contain precisely 20 acres while the statute provides that placer claims shall not include more than 20 acres.

Price v. McIntosh, 1 Alaska 286, p. 296.

The rule of approximation should apply with respect to placer claims upon surveyed lands the same as has been applied by the department to preemption, homestead, and other claims limited by statute to not exceed a specified area; but the rule should be applied on the basis of 10-acre legal subdivisions.

Ventura Coast Oil Co., In re, 42 L. D. 453, p. 455.

Overruling, *Chicago Placer Min. Claim*, In re, 34 L. D. 9, p. 11.

A miner can locate 20 acres or less of placer mining ground in any form he chooses, excluding nonmineral land, and no miners' rule, regulation, or custom can limit him in the area or form of his claim, nor in its width or length; and any such rule, regulation, or custom, is void as being in conflict with both the spirit and letter of the placer mining law.

Price v. McIntosh, 1 Alaska 286, p. 300.

Denying Roenthal v. Ives, 2 Idaho (244) 265.

See *Rablin*, In re, 2 L. D. 764.

Pearsall, In re, 6 L. D. 227.

Esperance Min. Co., In re, 10 C. L. O. 338.

2. LOCATION BY ASSOCIATION—QUANTITY.

This section authorizes an association location of contiguous claims only and clearly implies that claims not contiguous may not be joined in a single location.

Stenfeld v. Espe, 171 Fed. 825, p. 827.

A single placer claim, whether made by one person or association of persons, can not exceed 160 acres.

Donnelly v. United States, 228 U. S. 243, p. 265.

Ventura Coast Oil Co., In re, 42 L. D. 453, p. 454.

McDonald v. Montana Wood Co., 14 Mont. 88, p. 91.

The law is that the unit of an individual placer location is limited to 20 acres and not more than 160 acres may be embraced within one location by an association of persons of which there must be at least eight.

Rooney v. Barnette, 200 Fed. 700, p. 705.

An association of persons may locate a tract as a mining claim which shall embrace as many individual claims of 20 acres each as there are individuals in the association, not exceeding 160 acres in all.

Cook v. Klonos, 164 Fed. 529, p. 534.

Nome & Sinook Co. v. Snyder, 187 Fed. 385.

Hall v. McKinnon, 193 Fed. 572, p. 574.

Where a location is made by an association of locators the fraudulent and concealed conduct of one of the locators in the association claim should not invalidate the en-

ture location, particularly where the location can be reduced without injury to innocent parties to the limit observed for the number of locators who have not participated in the fraud.

Rooney v. Barnette, 200 Fed. p. 705.
See *Cook v. Klonos*, 168 Fed. 700.

The object in allowing an association of persons to take more than an individual is not to avoid a discovery of mineral but solely for the purpose of permitting them to thus make a consolidated entry and by one system of development work all the land upon which mineral had been previously discovered.

Louise Min. Co., In re, 22 L. D. 663, p. 665.

This section limits the aggregate that may be taken by any number of associated persons to 160 acres.

Bay v. Oklahoma Southern Gas, etc., Min. Co. 13 Okla. 425, p. 430.

It is the theory of the law that an association placer claim of 160 acres consists of 8 contiguous placer claims of not more than 20 acres each, and such a claim can not be located wholly upon valid subsisting placer claims previously located and in the lawful possession of other persons for the ostensible purpose of locating triangular pieces of land lying between boundaries of such previously located placer claims.

Stenfield v. Espe, 171 Fed. 825, p. 827.

3. LOCATION BY DUMMIES.

It is contrary to public policy for the locator of a placer mining claim to procure eight persons, friends and employees, to locate for him a placer claim containing in all 160 acres, and the fact that such locations were made to secure the water rights necessary to profitably work the ground does not prevent such location from being invalid.

Durant v. Corbin, 94 Fed. 382, p. 383.

4. POSSESSION OF ASSOCIATION CLAIM.

It is sufficient for persons locating a mining claim if they take and keep peaceable possession of an association placer claim in compliance with the statute and have a record of such location which contains the names of the locators, the date of the location, and a sufficient description of the claim by reference to natural objects and permanent monuments supplemented by the sinking of a shaft to bedrock, and where in the sinking of such shaft gold is discovered in the gravel, as against persons claiming and asserting a right to such claim by reason of a prior location in the absence of evidence of a discovery and where the evidences of prior possession were not shown to have been made by the persons asserting an interest in the claim.

Cook v. Klonos, 164 Fed. 529, p. 536.
See *Cook v. Klonos*, 168 Fed. 700.

5. LOCATION BY CORPORATION—QUANTITY.

A corporation, regardless of the number of its stockholders, can lawfully locate no greater placer area than is allowable in the case of a single natural person, and this is 20 acres.

Igo Bridge Extension Placer, In re, 38 L. D. 281, p. 282.
Bakersfield Fuel & Oil Co., In re, 39 L. D. 460.

See *McKinley v. Wheeler*, 130 U. S. 630.

Miller v. Chrisman, 140 Cal. 440.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

B. DISCOVERY ON PLACER CLAIMS.

1. DISCOVERY ESSENTIAL.

2. DISCOVERY ON ONE SUBDIVISION—EFFECT AND SUFFICIENCY.

1. DISCOVERY ESSENTIAL.

See section 2322, p. 108.

Discovery is the initial fact necessary to a mining claim and parties can not go upon the public domain and acquire the right of possession by the mere performance of the acts prescribed for a location.

Hall v. McKinnon, 193 Fed. 572, p. 576.

See Creede & Cripple Creek Min., etc., Co. v. Uinta Tunnel Min., etc., Co., 196 U. S. 337, p. 353.

The discovery of minerals is an essential thing to a valid mining location.

Zeiger v. Dowdy, 13 Ariz. 331, p. 334.

See Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 675.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568.

New England & Coalina Oil Co. v. Congdon, 152 Cal. 211, p. 213.

A subsequent discovery will not work the validation of a placer claim where the area of a claim exceeds that which the first locators can locate in the first instance.

Yard, In re, 38 L. D. 59, p. 68.

When an asserted placer claim of 160 acres made by eight persons, which is invalid because of a want of discovery, is transferred to one of such persons, he alone can not perfect such a location by making a subsequent discovery, as the eight persons are necessary both to initiate and perfect a valid location of that area.

Yard, In re, 38 L. D. 59, p. 69.

See Chrisman v. Miller, 197 U. S. 313.

Steele v. Tanana Mines R. Co., 148 Fed. 678.

Nichols, In re, L. D. (unreported).

While a single discovery of mineral is sufficient to authorize the location of a placer claim and may, in the absence of other evidence, be treated as sufficiently establishing the mineral character of the entire claim to justify the issuing of a patent, yet such single discovery does not conclusively establish the mineral character of all the land included in the claim so as to preclude further inquiry by the department as to the mineral character of the entire tract.

Ferrell v. Hoge, 29 L. D. 12, p. 15.

Crystal Marble Quarries Co. v. Dantice, 41 L. D. 642, p. 645.

See Yard, In re, 38 L. D. 59.

Nichols, In re, L. D. (unreported).

A placer patent is void if the location on which it was based was made without discovery.

Noyes v. Mantle, 127 U. S. 348.

McConaghy v. Doyle, 32 Colo. 92, p. 99.

2. DISCOVERY ON ONE SUBDIVISION—EFFECT AND SUFFICIENCY.

A placer claimant will not be required to prove a discovery on each 20 acres in a placer location of 160 acres where the rulings in force at the time of location require proof of a single discovery only, but opportunity may be given the locator for a further showing.

Ferrell v. Hoge, 19 L. D. 568 (on review).

See McDonald v. Montana Wood Co., 14 Mont. 88.

C. LOCATIONS ON SURVEYED AND UNSURVEYED LANDS.**1. DESCRIPTION AND FORM.****2. DIVISION OF LEGAL SUBDIVISIONS.****1. DESCRIPTION AND FORM.**

A placer mining claim must be located upon surveyed land and described by legal subdivisions thereof, and if such legal subdivisions include other entered claims, these should be excluded from the patent proceedings involving such placer claim.

Mary Darling Placer Claim, In re, 31 L. D. 64.

Rialto No. 2 Placer Min. Claim, In re, 34 L. D. 44, p. 46.

Green v. Gavin, 10 Cal. App. 330, p. 336.

See Laughing Water Placer, In re, 34 L. D. 56, p. 58.

A placer claim, whether on surveyed or unsurveyed lands, must conform to the system of public land surveys and the rectangular subdivisions thereof.

Roman Placer Min. Claim, In re, 34 L. D. 260, p. 262.

Lovely Placer Claim, In re, 35 L. D. 426, p. 427.

The requirement of the law as to the location of placer claims upon unsurveyed land is met by locating the claims in rectangular form with proper dimensions and with eastern and western and northern and southern lines.

Wood Placer Min. Co., In re, 32 L. D. 363, p. 365.

Hogan & Idaho Min. Claims, In re, 34 L. D. 42, p. 43.

Two rules are recognized in locating and fixing the exterior boundaries of placer claims: one requiring them to conform to the system of public land surveys; and the other, where this can not be done, a survey and plat shall be made as on unsurveyed lands; and these two rules, together with the provision reducing the area to 20 acres, continues to be the law.

Price v. McIntosh, 1 Alaska 286, p. 295.

The only limitation imposed by the statute upon the location of a placer mining claim upon the unsurveyed public land in Alaska is that it shall not include more than 20 acres.

Price v. McIntosh, 1 Alaska 286, p. 295.

The courts of Alaska will take judicial notice that the public land surveys have not been extended to the entire district of Alaska and do not embrace a particular placer claim and that all public domain within a particular part of the jurisdiction of the court is unsurveyed and that placer mining claims upon such lands may be located without regard to the public surveys.

Price v. McIntosh, 1 Alaska 286, p. 295.

The boundaries of a placer claim may be formed by side lines parallel to the center lines and by end lines at right angles thereto where the marking of the claim is on the center line, and in such case the side lines may be located equidistant from the center line and embrace 20 acres.

Loeser v. Gardiner, 1 Alaska 641, p. 646.

See Erhardt v. Boaro, 113 U. S. 527.

Mount Diablo, etc., Min. Co. v. Callison, 17 Fed. Cas. 918.

Gleeson v. Martin White Min. Co., 13 Nev. 442.

A miner's rule or regulation arbitrarily fixing the size of all placer claims in Alaska at 1,320 feet in length by 660 feet in width, without any exception or variation, is unreasonable and is in conflict with the United States statute, as such a rule, custom, or regulation can not limit a placer claim to less than 20 acres nor fix an unvaried form for such claims upon the unsurveyed public lands of Alaska.

Price v. McIntosh, 1 Alaska 286, p. 296.

See Rablin, In re, 2 L. D. 764.

Pearsall, In re, 6 L. D. 227.

Esperance Min. Co., In re, 10 C. L. O. 338.

2. DIVISION OF LEGAL SUBDIVISIONS.

The legal subdivisions on which placer claims may be located may be subdivided into 10-acre tracts.

Reins v. Murray, 22 L. D. 409, p. 411.

McNabb, In re, 42 L. D. 413, p. 415.

See *Meiklejohn v. Hyde*, 42 L. D. 144, p. 148.

Where a legal subdivision of 40 acres is divided into two or more fractional lots of an intersecting survey, such fractional lots may be embraced in one location and a patent may be granted therefor in the same manner as when the entire tract is applied for.

Foote, In re, 9 C. L. O., p. 113.

The statute does not contemplate that in the location and entry of placer mining claims rectangular tracts of 5 acres may be recognized and treated as legal subdivisions, as the smallest legal subdivision recognized and provided for is 10 acres, which must be in square form.

Roman Placer Min. Co., In re, 34 L. D. 260, p. 263.

A placer location may be made of a 10-acre tract in a square form, and if such a tract, whether in a single location or with others, is shown to be nonplacer ground, then it can not pass to entry and patent under a placer application.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 301.

The fact that a placer claim was located within a particular subdivision and in such manner as to interpose between different parts of a quarter section does not render the settlement claim noncontiguous, as the placer claim is merely a segregation of a part of such particular legal subdivision over which the settlement and residence of the homestead applicant extended.

Wright, In re, 32 L. D. 522, p. 524.

D. RELOCATION.

Mining claims are not open to relocation until the rights of former locators have come to an end, as two locations can not legally occupy the same ground at the same time.

Stenfeld v. Espe, 171 Fed. 825, p. 827.

See *Porter v. Tonopah North Star Tunnel & Dev. Co.*, 133 Fed. 756.

E. AGRICULTURAL AND MINERAL LANDS.**1. PROOF OF CHARACTER.****2. SEGREGATION OF MINERAL AND AGRICULTURAL LANDS.****1. PROOF OF CHARACTER.**

The report of the surveyor general is sufficient prima facie to make lands agricultural though they are in the mineral belt of California, and if any such section so designated was alleged to be mineral a hearing for the purpose of determining the facts should be held, but the burden of proof in such case should rest on the person alleging the land to be mineral.

Hooper v. Ferguson, 2 L. D. 712, p. 713.

Caledonia Min. Co. v. Rowen, 2 L. D. 714, p. 717.

See *Elda Min., etc., Co.*, In re, 29 L. D. 279, p. 281.

As 10-acre areas in square form are recognized as legal subdivisions under mining laws, a necessary inclusion therein of some nonplacer land will not affect the validity of the claim if the land as a whole is more valuable for placer mining than for agricultural purposes:

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 253.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 302.

2. SEGREGATION OF MINERAL AND AGRICULTURAL LANDS.

This section recognizes the fact that the same land may be both agricultural and mineral.

Harrison, In re, 19 L. D. 299, p. 300.

A survey of agricultural lands may be made so as to segregate the part of the land actually containing a mining location from the remainder of the tract and separate patents issued to the mineral and agricultural claimant.

Lannon v. Pinkston, 9 L. D. 143, p. 144.

It not infrequently occurs that tracts of land small portions of which are not valuable for placer mining are embraced within placer locations where the lands as a whole are in fact more valuable for a placer mine than for agricultural purposes.

Hogan & Idaho Placer Min. Claims, In re, 34 L. D. 42, p. 43.

A homestead entry is a reservation of the land from further entry until after a hearing, and until such time a mineral application can not be received for the same land.

Hooper v. Ferguson, 2 L. D. 712.

The homesteader whose claim is impaired by a mineral entry has the right of appeal.

Hooper v. Ferguson, 2 L. D. 712, p. 713.

F. ASPHALTUM AND PHOSPHATE LANDS AS PLACER LOCATIONS.

Phosphate lands may be located as a placer claim under the provisions of this section.

Phosphate Deposits, In re, 17 C. L. O. 74.

See Duffield v. San Francisco Chemical Co., 205 Fed. 480.

When asphaltum is found in a liquid or semiliquid state and is not in rock in place, it may be located as a placer claim.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 206.

G. CONSOLIDATION OF CLAIMS.

1. JOINT ENTRY.

2. SALE AND ACQUISITION OF CLAIMS—PATENT.

1. JOINT ENTRY.

See sec. 2325, p. 323.

Under this section two or more persons, or an association of persons, having contiguous claims of any size are permitted to make a joint entry thereof.

Smelting Co. v. Kemp, 104 U. S. 636, p. 653.

Donnelly v. United States, 228 U. S. 243, p. 265.

As the statute permits two or more persons having contiguous claims to make a joint entry, it follows that a single person should be permitted to unite his entries which adjoin each other in one survey.

Smelting Co. v. Kemp, 104 U. S. 636, p. 653.

According to the rules and regulations of the miners long before patents were issued, miners were in the habit of consolidating adjoining claims, whether they consisted of one or more original locations, into one for convenience and economy in working it, and this practice has been permitted and approved by the department.

Smelting Co. v. Kemp, 104 U. S. 636, p. 653.

See Poire v. Wells, 6 Colo. 406, p. 412.

This section provides for the joint entry and patent of contiguous placer claims owned by two or more persons, and this necessarily implies that they may be located and occupied jointly before such purchase.

Chapman v. Toy Long, 5 Fed. Cas. 497.

Under this section legal subdivisions of 40 acres may be subdivided into 10-acre tracts and two or more persons having contiguous claims of any size less than 10 acres each may make joint entry thereof, and these provisions are intended to meet conditions peculiar to the assertion of placer claims where the placer deposits are limited in extent to tracts of smaller area than 40 acres.

Roman Placer Min. Co., In re, 34 L. D. 260, p. 262.

The provision permitting two or more persons to make a joint entry of contiguous claims authorizes an assignee of several such claims to join the claims in a single entry or to make separate entries at his election.

Williams, In re, 15 L. D. 532, p. 533.

Mackie, In re, 5 L. D. 199.

Golden Sun Min. Co., In re, 6 L. D. 808.

See Good Return Min. Co., In re, 4 L. D. 221.

Rogers, In re, 4 L. D. 284.

Champion Min. Co., In re, 4 L. D. 362.

The provisions of this section that two or more persons or association of persons having contiguous claims may make joint entry thereof is subject to the limitation that no location of a placer claim shall exceed 160 acres for any one person or association of persons.

Cook v. Klonos, 164 Fed. 529, p. 537.

It can not be assumed that where a placer mineral deposit is discovered in any 40-acre subdivision that an association of eight persons is thereby authorized to embrace in a mining location founded upon such discovery three other contiguous 40-acre subdivisions of nonmineral land and to receive a patent therefor as a part of such mining claim.

Ferrell v. Hoge, 29 L. D. 12, p. 15.

2. SALE AND ACQUISITION OF CLAIMS—PATENT.

Neither this section nor the section following puts any limitation upon the sale of the ground located nor upon the number of locations which may be acquired by purchase, nor upon the number which may be included in a patent.

Smelting Co. v. Kemp, 104 U. S. 636, p. 651.

The mining statutes contain numerous provisions assuming and recognizing the salable character of the locator's interest in a mining claim.

Smelting Co. v. Kemp, 104 U. S. 636, p. 651.

SECTION 2331, REVISED STATUTES.

Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the 10th day of May, 1872, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than 20 acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than 40 acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

Same as section 10, act of May 10, 1872 (17 Stat. 91), p. 681.

A. OBJECT AND CONSTRUCTION OF SECTION.

B. LOCATIONS ON SURVEYED LANDS, p. 540.

C. LOCATIONS ON UNSURVEYED LANDS, p. 544.

D. POSSESSORY RIGHTS—EFFECT OF TEMPORARY ABSENCE, p. 545.

E. HOMESTEAD AND MINERAL CLAIMANTS—RELATIVE RIGHTS, p. 545.

F. REPRESENTATION WORK—VALUE OF IMPROVEMENTS—APPORTIONMENT, p. 546.

G. PLACER GROUND—BEDS OF STREAMS, p. 546.

A. OBJECT AND CONSTRUCTION OF SECTION.

1. QUANTITY OF LAND LOCATED AS PLACER.
2. LOCATION BY INDIVIDUAL—QUANTITY.
3. LOCATION BY INDIVIDUAL—DOCTRINE OF RELATION.
4. AMENDING LOCATION—EFFECT.
5. LOCATION BY AGENTS OR DUMMIES.
6. LOCATION BY ASSOCIATION—QUANTITY.
7. LOCATION BY CORPORATION—QUANTITY.
8. FORM OF LOCATION—"SHOESTRING" LOCATIONS.
9. EXCESSIVE LOCATION—EFFECT.
10. DISCOVERY ON SUBDIVISIONS OF ASSOCIATION LOCATIONS—NUMBER.

1. QUANTITY OF LAND LOCATED AS PLACER.

The policy and object of this section is to limit the quantity of placer mineral land which may be located by one person to 20 acres, and while one person may obtain a patent for more than this amount he can do so only by representing to the Government that he is a purchaser of any excess from one or more bona fide locators whose locations were made in conformity with this limitation, and as showing his good faith

in this particular he must present with his application for a patent authenticated abstracts of title showing its derivation from lawful locators.

Cook v. Klonos, 164 Fed. 529, p. 538.

Mitchell v. Cline, 84 Cal. 409, p. 415.

See *Cook v. Klonos*, 168 Fed. 700.

It was the intention of the mining laws to permit persons to take a certain quantity of land fit for mining, but not to compel them to take such a quantity irrespective of its fitness for mining.

Rablin, In re, 2 L. D. 764, p. 765.

Pearsall, In re, 6 L. D. 227.

Miller Placer Claim, In re, 30 L. D. 225.

Esperance Min. Co., In re, 10 C. L. O. 338.

Mitchell v. Hutchinson, 142 Cal. 404, p. 407.

See *Snow Flake Fraction Placer*, In re, 37 L. D. 250, p. 251.

The word "claimant," as used in this section, means locator.

Garden Gulch Bar Placer, In re, 38 L. D. 28, p. 31.

There is no authority under the mining laws for making entry and obtaining patent for a placer claim composed of tracts as small as 5 acres in area though in rectangular form.

Roman Placer Min. Co., In re, 34 L. D. 260, p. 261.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 255.

2. LOCATION BY INDIVIDUAL—QUANTITY.

See sec. 2330, p. 526.

This section limits placer claims to 20 acres for each individual claimant.

Smelting Co. v. Kemp, 104 U. S. 636, p. 651.

Donnelly v. United States, 228 U. S. 243, p. 265.

Hall v. McKinnon, 193 Fed. 572, p. 574.

Ventura Coast Oil Co., In re, 42 L. D. 453, p. 454.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 430.

The prohibition of this section against the location of more than 20 acres for each individual claimant is direct and positive, and limits the amount of ground that each claimant may appropriate either individually or in an association claim at the time of the location.

Cook v. Klonos, 164 Fed. 529, p. 537.

See *Cook v. Klonos*, 168 Fed. 700.

Nome & Sinook Co. v. Snyder, 187 Fed. 385, p. 388.

Rooney v. Barnette, 200 Fed. 700, p. 704.

A miner may locate 20 acres or less of placer mining ground in any form he chooses.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 257.

See *Price v. McIntosh*, 1 Alaska, 300.

McIntosh v. Price, 121 Fed. 716.

3. LOCATION BY INDIVIDUAL—DOCTRINE OF RELATION.

Where no discovery has been made on a placer claim of 160 acres until after its transfer to a single individual, such person can not invoke the doctrine of relation; and as he is prohibited from locating more than 20 acres he can not maintain that his claim exceeding that area is validated by the subsequent discovery.

Yard, In re, 38 L. D. 59, p. 69.

Bakersfield Fuel & Oil Co., In re, 39 L. D. 460, p. 461.

See *Chrisman v. Miller*, 197 U. S. 313.

Miller v. Chrisman, 140 Cal. 440.

If at the time rights would otherwise accrue the holder of a placer mining claim who can not invoke the doctrine of relation is incapable of making a location embrac-

ing more than 20 acres, he can not, by reason of such incapacity, assert or maintain that his claim exceeding such area is validated by a subsequent discovery, for the reason that as an individual he is prohibited from locating more than 20 acres.

Yard, *In re*, 38 L. D. 59, p. 60.

4. AMENDING LOCATION—EFFECT.

A placer location of 20 acres by one person can not be amended for the purpose of effecting conformity to the public land survey, or for any other purpose, so as to include a greater area than 20 acres, whether such amendment is attempted by one or more claimants.

Head, *In re*, 40 L. D. 135, p. 137.

There is no authority for the owner of two or more contiguous placer mining locations to substitute therefor a single location under the guise of amending one.

Garden Gulch Bar Placer, *In re*, 38 L. D. 23, p. 31.

An applicant for patent for a placer claim can not by an amended or a supplemental location enlarge a 20-acre location so as to cover 40 acres, as this would be essentially another and a new location.

Head, *In re*, 40 L. D. 135, p. 138.

5. LOCATION BY AGENTS OR DUMMIES.

See sec. 2330, p. 528.

The restrictions imposed in the location of placer claims are intended to prevent the primary location and accumulation of large tracts of land by a few persons, and to encourage the exploration of mineral resources of the public land by actual bona fide locators, and the scheme of using the names of dummy locators in making the location of such a mining claim for the purpose of securing a concealed interest is contrary to the spirit of the statute; and when the scheme is used to secure an interest in a claim for a single person in excess of the statutory limit, it is in violation of the express command of the statute, and where all the locators have knowledge of the concealed interest and are parties to the use of the names of the dummy locators the location is invalid.

Cook v. Klonos, 164 Fed. 529, p. 538.

See Cook v. Klonos, 168 Fed. 700.

A single person can not, by the use of the names of his friends, relatives, or employees as dummies, locate for his own benefit a greater area of placer mining ground than is allowed by law.

Cook v. Klonos, 164 Fed. 529, p. 538.

Hall v. McKinnon, 193 Fed. 572, p. 580.

See Cook v. Klonos, 168 Fed. 700.

Any scheme or device whereby one person is to acquire more than 20 acres in area constitutes a fraud upon the law, and consequently a fraud upon the Government, and any such location is without legal support and void.

Nome & Sinook Co. v. Snyder, 187 Fed. 385, p. 388.

Duffield v. San Francisco Chemical Co., 205 Fed. 480, p. 485.

See Gird v. California Oil Co., 60 Fed. 531.

Durant v. Corbin, 94 Fed. 382.

Mitchell v. Cline, 84 Cal. 409.

The rule that an individual claimant can not locate more than 20 acres in a placer location is not limited to a case where an individual seeks in his own name to make a single location for an area in excess of that allowed by law, but extends to cases where

an individual procures others to act, either independently or with himself, in making for his benefit a location of a larger area than he himself could lawfully make.

Coalinga Hub Oil Co., In re, 40 L. D. 401, p. 404.

See *Gird v. California Oil Co.*, 60 Fed. 531.

Durant v. Corbin, 94 Fed. 382.

Cook v. Klonos, 164 Fed. 529.

Nome & Sinook Co. v. Snyder, 187 Fed. 385.

Mitchell v. Cline, 84 Cal. 409.

Innocent locators who were joined with dummies in good faith on their part in the location of excessive territory of a placer mining claim are entitled to select 20 acres each, within the exterior boundaries of the associated claim, if they have continued to conform to the statutory and the local rules of the mining district.

Cook v. Klonos, 168 Fed. 700, p. 701.

6. LOCATION BY ASSOCIATION—QUANTITY.

The unit of individual location under this section is 20 acres, and not more than 160 acres may be embraced within one location by an association of persons, of whom there must be at least eight.

Nome & Sinook Co. v. Snyder, 187 Fed. 385, p. 387.

See *Kirk v. Meldrum*, 28 Colo. 453, p. 460.

While a placer location shall not include more than 20 acres for each individual claimant, yet such location may be of greater or less quantity of land, according to the greater or less number of persons uniting to make the location, the only limitation being that it shall not include more than 20 acres for each individual, or 160 acres as a whole.

Union Oil Co., In re, 25 L. D. 351, p. 358.

Under this section a claim located by three persons must be limited to the statutory number of acres where it appears that they are all in the employ and are acting in the interests of a single company.

Gird v. California Oil Co., 60 Fed. 531, p. 545.

Cook v. Klonos, 164 Fed. 529, p. 538.

Five persons may, by means of proper association, under this section, make valid location of 100 acres in one claim, but five persons, by associating themselves together, can not locate 100 acres in one claim by which one or two of the five can acquire thereby substantially all of the claims, leaving the others with proportionally a very small or nominal interest therein, but the interest of neither can exceed 20 acres.

Nome & Sinook Co. v. Snyder, 187 Fed. 385, p. 388.

An application for a placer location by four persons for the maximum quantity of ground that such number of persons can lawfully embrace in a single location can not be amended so as to include a larger area, nor could it be so amended by one person.

Garden Gulch Bar Placer, In re, 38 L. D. 28, p. 31.

Head, In re, 40 L. D. 135, p. 137.

7. LOCATION BY CORPORATION—QUANTITY.

See sec. 2330, p. 528.

When a corporation locates a lode or placer claim under the mining laws it does so in its strictly corporate capacity, and it is with respect to it as a corporate entity rather than in the collective capacity of the stockholders that the provisions of the mining laws must be applied.

Igo Bridge Extension Placer, In re, 38 L. D. 281, p. 283.

56974°—Bull. 94—15—37

Under this act no placer location made after May, 1872, shall include more than 20 acres for each individual claimant, and in this respect a corporation is not different from a natural person.

Coalinga Hub Oil Co., In re, 40 L. D. 401, p. 403.

8. FORM OF LOCATION—"SHOESTRING" LOCATIONS.

The Land Department does not recognize a shoestring location of a placer mining claim, as it is the policy of the Government to have entries of agricultural or mineral lands in compact form, and the public domain can not for either purpose be cut into long and narrow strips, and no shoestring claim can receive the sanction of the department.

Hanson v. Craig, 170 Fed. 62, p. 65.

The department is unwilling to approve long and irregular-shaped placer claims, though these have been formerly and correctly permitted.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 258.

See Rablin, In re, 2 L. D. 764.

Pearsall, In re, 6 L. D. 227.

A patent for a placer mining claim will not be issued where the claim not only fails to approximate conformity with the system of public-land surveys, but is totally at variance with such system, which affords no warrant for cutting the public lands into lengthy strips of narrow width.

Miller Placer Claim, In re, 30 L. D. 225, p. 226.

Valid placer mining claim locations may be made of the separate parcels and irregular or triangular tracts surrounded and bounded by prior valid placer claims, as the locators of such parcels have the right to assume that such land is vacant and unappropriated; and the locator of such an irregular placer parcel thus surrounded by other locations is not required to search the surrounding country to ascertain whether the locators of an association placer claim have not placed their posts a half mile distant from each other, with the intention and for the purpose of appropriating such segregated parcels and fractions of land lying between the boundaries of subsisting placer claims.

Stenfjeld v. Espe, 171 Fed. 825, p. 828.

9. EXCESSIVE LOCATION—EFFECT.

See sec. 2329, p. 514.

An excessive location of a placer mining claim does not render the entire claim void, but it is void only as to such excess.

Zimmerman v. Funchion, 161 Fed. 859, p. 860.

Jones V. Wild Goose Min., etc., Co., 177 Fed. 95, p. 98.

See Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.

English v. Johnson, 17 Cal. 108.

Thompson v. Spray, 72 Cal. 528.

Howeth v. Sullenger, 113 Cal. 547.

McElligott v. Krogh, 151 Cal. 126.

Patterson v. Hitchcock, 3 Colo. 533.

Taylor v. Parenteau, 23 Colo. 368.

McPherson v. Julius, 17 S. Dak. 98.

Hansen v. Fletcher, 10 Utah 266.

The unintentional inclusion in a placer mining claim of a trifle more than 20 acres is an irregularity which does not vitiate the location, but merely makes it necessary that the excess be excluded when it becomes known.

Waskey v. Hammer, 223, U. S. 85, p. 90.

Affirming Waskey v. Hammer, 170 Fed. 31, p. 34.

Richmond Min. Co. v. Rose, 114 U. S. 576.

Zimmerman v. Funchion, 161 Fed. 859.

A locator in the actual possession of a placer mining claim which in fact exceeds the legal limit of 20 acres, but who is diligently working the same in good faith, is at liberty to elect what portion of the claim he will reject as excess, and another locator has no right to enter upon that part of the claim which is being so worked because of any alleged excess.

McIntosh v. Price, 121 Fed. 716.

A person who has located a placer mining claim in attempted compliance with the mining rules and laws, and who is actually engaged in mining upon a certain portion of such claim, can not be thrust out of the possession of his discovery and pay streak by another locator because the original location was for a greater extent or width of territory than prescribed by the statute.

Atherton v. Fowler, 96 U. S. 513, p. 515.

McIntosh v. Price, 121 Fed. 716, p. 718.

See Eilers v. Boatman, 111 U. S. 357.

Haws v. Victoria Copper Min. Co., 160 U. S. 303, p. 317.

Where local mining rules gave a locator of a placer claim 20 acres to be located 1,320 feet in length and 1,620 feet in width, a person who locates a claim of not exceeding the 20 acres, but by mistake makes the length less and the width greater than that prescribed, another location can not be made within the excessive limits as to the width where the original locator is in actual possession of such excess and claiming the same under his mistaken location.

McIntosh v. Price, 121 Fed. 716, p. 718.

See Walton v. Wild Goose Min., etc., Co., 123 Fed. 209, p. 218.

The locator of a placer claim who has included an excessive amount of land may be permitted to designate the portion of the claim to be canceled, and the survey must then be amended to conform to the residue.

Knapp, In re, 2 L. D. 763.

A qualified person who makes an excessive location of a placer mining claim and then accepts an appointment as a deputy surveyor of the Land Department can not thereafter change the boundaries and perfect a location by a new discovery.

Waskey v. Hammer, 170 Fed. 31, p. 35.

Affirmed in Waskey v. Hammer, 223 U. S. 85.

10. DISCOVERY ON SUBDIVISIONS OF ASSOCIATION LOCATIONS— NUMBER.

But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual or of 160 acres or less by an association of persons.

Union Oil Co., In re, 25 L. D. 351, p. 359.

Ferrell v. Hoge, 27 L. D. 129, p. 130.

Reins v. Raunheim, 28 L. D. 526, p. 529.

Ferrell v. Hoge, 29 L. D. 12, p. 15.

Crystal Marble Quarries Co. v. Dantice, 41 L. D. 642, p. 644.

Nome & Sinook Co. v. Snyder, 187 Fed. 385, p. 388.

Cook v. Klonos, 164 Fed. 529, p. 537.

Hall v. McKinnon, 193 Fed. 572, p. 574.

McDonald v. Montana Wood Co., 14 Mont. 88.

Whiting v. Straup, 17 Wyo. 1.

Overruling Ferrell v. Hoge, 18 L. D. 81.

Ferrell v. Hoge, 19 L. D. 568.

Southern Pac. R. Co. v. Griffin, 20 L. D. 485.

Rhodes v. Treas, 21 L. D. 502.

Louise Min. Co., In re, 22 L. D. 663.

Union Oil Co., In re, 23 L. D. 222.

Quigley v. California, 24 L. D. 507.

A discovery of gold in a shaft sunk to a depth of 88 feet on a placer mining claim of 160 acres located by eight persons is sufficient to support the location of the entire tract.

Hall v. McKinnon, 193 Fed. 572, p. 575.

See Union Oil Co., In re, 25 L. D. 351.

Kirk v. Meldrum, 28 Colo. 453.

McDonald v. Montana Wood Co., 14 Mont. 88.

The rule of the department is that while one discovery of mineral is a sufficient basis for an association location of a placer claim, otherwise valid, yet if it is subsequently shown by an adverse claimant or by a protestant that any area of such association location, amounting to a legal subdivision, does not contain mineral, or is not valuable for the mineral contained, then such legal subdivision must be excluded from the application and from entry.

Ferrell v. Hoge, 27 L. D. 129, p. 131.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 304.

Crystal Marble Quarries Co. v. Dantice, 41 L. D. 642, p. 645.

Under this section there must be a discovery of mineral upon each 20-acre tract included in a placer location of 160 acres, and a placer location of that amount of land can not be made upon a single discovery; but in such case the claim will be limited to the 20 acres immediately surrounding the place of discovery.

Ferrell v. Hoge, 18 L. D. 81, p. 85.

Crystal Marble Quarries Co. v. Dantice, 41 L. D. 642, p. 645.

While a single discovery is sufficient to authorize the location of a placer claim, and may, in the absence of any contrary showing, be accepted as establishing the mineral character of the land located sufficient to justify entry and patent, yet such single discovery does not conclusively establish the mineral character of the entire tract so as to preclude further inquiry as to the character of the land.

Ferrell v. Hoge, 29 L. D. 12, p. 13.

Crystal Marble Quarries Co. v. Dantice, 41 L. D. 642, p. 645.

Ten-acre tracts, normally in square forms, are the units of investigation and determination as to the character of land embraced in a placer location, and if such a unit of area is found on subsequent investigation or development to be in fact nonmineral, then it should be eliminated.

American Smelting, etc., Co., In re, 39 L. D. 299, p. 303.

Crystal Marble Quarries Co. v. Dantice, 41 L. D. 642, p. 646.

The department does not hold that actual disclosure of mineral must be made on each 10-acre tract; but in a contest the locator can only succeed as to the area shown to be mineral in character, and for this purpose the land may be divided into 10-acre tracts.

Crystal Marble Quarries Co. v. Dantice, 41 L. D. 642, p. 646.

B. LOCATIONS ON SURVEYED LANDS.

1. PURPOSE OF REQUIREMENT.
2. LOCATIONS CONFORMING TO SURVEY.
3. LOCATIONS CONFORMING TO SURVEY AS NEAR AS PRACTICABLE—MEANING.
4. LOCATIONS CONFORMING TO SURVEY—MARKING BOUNDARIES.
5. LOCATIONS ON SURVEYED LAND—WHEN PLAT AND SURVEY ARE REQUIRED.

1. PURPOSE OF REQUIREMENT.

This section is expressed in terms of wider scope and broader import than sections 2329 and 2330, and it requires all placer mining claims to be conformed, as near as practicable, to the system of public land surveys and the rectangular subdivisions thereof, and its evident purpose is to supplement the preceding provisions and to provide for all other cases, not otherwise provided for, and among these are to be included claims upon unsurveyed lands.

Wood Placer Min. Co., In re, 32 L. D. 363, p. 364.

The act of July 9, 1870 (16 Stat. 217), which expressly required placer locations to conform to the lines of the public surveys, was unreasonable and a hardship, and in contravention of the established custom of the mining regions; and it was therefore modified by the act of May 10, 1872 [17 Stat. 91], so as to provide for exceptional cases where reason and common sense required a different regulation, such as exists in this case where the placer deposit is situated in a canyon and the adjoining land on either side is totally unfit either for mining or agriculture.

Rablin, In re, 2 L. D. 764, p. 765.

Ferrell v. Hoge, 29 L. D. 12, p. 14.

See Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 251.

The inference is that this section is intended to make provision for all other placer claims than those provided for in the two preceding sections, and as specific provisions are made for locations upon surveyed lands the necessity for an adequate provision for placer locations not in that situation is apparent; and it is not to be assumed that Congress intended to supply the omission in part only where the terms employed are broad enough to cover all cases, and the language of this section is ample for this purpose; and it is clear that locations upon unsurveyed lands are within the purview of this section.

Wood Placer Min. Co., In re, 32 L. D. 363, p. 364.

2. LOCATIONS CONFORMING TO SURVEY.

Placer mining claims located after the 10th day of May, 1872, must conform as nearly as practicable with the system of public surveys and the subdivisions thereof, and an application will not be considered where the land described is totally at variance with such system which affords no warrant for cutting the public lands into lengthy strips and narrow widths.

Wood Placer Min. Co., In re, 32 L. D. 198.

Hogan & Idaho Placer Min. Claims, In re, 34 L. D. 42.

Rialto No. 2 Placer Min. Claim, In re, 34 L. D. 44.

See Miller Placer Claim, In re, 30 L. D. 225, p. 227.

Wood Placer Min. Co., In re, 32 L. D. 363.

Chicago Placer Min. Claim, In re, 34 L. D. 9.

Placer claims, whether upon surveyed or unsurveyed lands, are required to conform as nearly as practicable to the United States system of public land surveys.

Southern Pac. R. Co. v. Griffin, 20 L. D. 485, p. 487.

Roman Placer Min. Co., In re, 34 L. D. 260, p. 262.

Hogan & Idaho Placer Min. Claims, In re, 34 L. D. 42.

Rialto No. 2 Placer Min. Claim, In re, 34 L. D. 44.

Laughing Water Placer, In re, 34 L. D. 56.

Placer claims upon surveyed lands shall be described by legal subdivisions.

Rialto No. 2 Placer Min. Claim, In re, 34 L. D. 44.

Golden Chief "A" Placer Claim, In re, 35 L. D. 557, p. 558.

Whether or not a placer claim conforms sufficiently to the public survey is a question of fact to be determined by the Land Department, and a case must be decided upon its own facts; but it is the policy of the Government to have all such entries in compact form and not permit the public domain to be cut into long and narrow strips.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 257.

The division of 40-acre tracts into 10-acre lots is authorized for the purpose of enabling placer locators to conform to the public surveys.

Placer Min. Claims, In re, 10 C. L. O. 3.

The mere location of a mining claim does not have the effect to separate the lands into noncontiguous tracts within the meaning of the term "noncontiguous," as used in connection with the administration of the public land laws, and the fact that a placer location conforming to legal subdivisions of public surveys would embrace a portion of land covered by a prior location is not sufficient reason for failure to conform such placer location to the legal subdivisions as required by the section.

Rialto No. 2 Placer Min. Claim, In re, 34 L. D. 44, p. 46.

See Laughing Water Placer, In re, 34 L. D. 56, p. 58.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 254.

3. LOCATIONS CONFORMING TO SURVEY AS NEAR AS PRACTICABLE—MEANING.

Locators of placer claims are required to conform to the lines of the public survey only where it is reasonably practicable, and otherwise it is sufficient if they conform as near as is reasonably practicable.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 257.

Mitchell v. Hutchinson, 142 Cal. 404, p. 407.

See Rablin, In re, 2 L. D. 764.

Pearsall, In re, 6 L. D. 227.

By the phrase "shall conform as near as practicable" Congress has vested the Land Department with the power to provide that hereafter a claim located by one or two persons which can be entirely included within a square 40-acre tract, a claim located by three or four persons which can be entirely included in two square 40-acre tracts placed end to end, a claim located by five or six persons which can be entirely included in three square 40-acre tracts, and a claim located by seven or eight persons which can be entirely included in four square 40-acre tracts should be approved, but the 40-acre tracts need not necessarily have north-and-south and east-and-west boundary lines.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 258.

The requirement that a placer claim upon surveyed land must conform to the legal subdivisions thereof means that the claim must conform only as near as reasonably practicable, as the mining laws permit persons to take a certain quantity of land fit for mining, but does not compel them to take a quantity irrespective of its fitness for mining, and the act of July 9, 1870 (16 Stat. 217) was modified by the act of May 10, 1872 (17 Stat. 91).

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 252.

See Pearsall, In re, 6 L. D. 227, p. 231.

Miller Placer Claim, In re, 30 L. D. 225.

The word "practicable" in this section means reasonably practicable, and it may be unreasonable under certain circumstances to require an applicant to conform his location to legal subdivision.

Rablin, In re, 2 L. D. 764.

Esperance Min. Co., In re, 10 C. L. O. 338.

There are instances of gulch placer claims upon surveyed lands which are laid upon and along the bed of streams whose banks are inclosed or surmounted by precipitous crevices barren of mineral, and the boundaries of the location embracing and follow-

ing the opposite shores; under such circumstances the locations can not be practically conformed to survey lines.

Wood Placer Min. Co., In re, 32 L. D. 363, p. 364.

See Rablin, In re, 2 L. D. 764.

Pearsall, In re, 6 L. D. 227.

Esperance Min. Co., In re, 10 C. L. O. 338.

Wood Placer Min. Co., In re, 32 L. D. 401.

A placer entry will not be held for cancellation on the ground that it does not conform as near as practicable to the system of public surveys, where it appears that the entry embraces a deposit located on a small, unnavigable stream, winding through a canyon with precipitous nonmineral and uncultivable banks, but such entry will be allowed, as it is evident that Congress intended by this section to provide for cases where the situation of the deposits is such that conformity of location with subdivisional lines is unreasonable.

Rablin, In re, 2 L. D. 764, p. 765.

See Ferrell v. Hoge, 29 L. D. 12, p. 14.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 251.

The fact that portions of other claims already entered may be embraced in a placer location by conforming it to legal subdivisions does not make such conformity impracticable within the meaning of this section.

Green v. Gavin, 10 Cal. App. 330, p. 337.

It is unreasonable, impracticable, and not in harmony with the conformity provisions of the statute to require a mineral claimant, particularly in Alaska, to conform to legal subdivisions of the public survey, and the rectangular subdivisions thereof, when such requirement would compel him to place his lines on other prior located claims or when his claim is surrounded by prior locations, and this whether the claim is on surveyed or unsurveyed lands.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 258.

Overruling and modifying Rialto No. 2 Placer Min. Claim, In re, 34 L. D. 44; Golden Chief "A" Placer Claim, In re, 35 L. D. 557.

4. LOCATIONS CONFORMING TO SURVEY—MARKING BOUNDARIES.

While this section requires placer claims to conform to the legal subdivisions of the public lands, yet this is not inconsistent with the provision requiring the claim to be marked on the ground so that its boundaries can be readily traced, and this section does not dispense with this requirement.

Worthen v. Sidway, 72 Ark. 215, p. 224.

Matlock v. Stone, 77 Ark. 195, p. 200.

The provision of this section requiring placer claims on surveyed lands to conform to legal subdivisions and excusing further survey or plat has no reference to the marking of the boundaries of a claim on the ground, and the statute of Colorado calling for stakes to be set at the angles of a placer claim does not conflict with this section.

Saxton v. Perry, 47 Colo. 263, p. 275.

The provision requiring placer claims to conform to legal subdivisions does not refer to the marking by the claimant of the boundaries of his claim upon the ground, but has reference only to the plat and survey which are to be filed with the application for a patent.

White v. Lee, 78 Cal. 593, p. 595.

Where placer claims conform to legal subdivisions no other survey or plat is required, and it would seem to be the intention of the statute that the location of placer claims by legal subdivisions renders the markings of the boundaries on the surface unnecessary.

Reins v. Murray, 22 L. D. 409, p. 411.

5. LOCATIONS ON SURVEYED LAND—WHEN PLAT AND SURVEY ARE REQUIRED.

The purpose of the requirement of plats in certain cases is to inform the Land Department, as well as conflicting locators or protestants, of all the material facts concerning the same which can be shown by plat and field notes.

Khern, In re, 6 L. D. 580.

See Mackie, In re, 5 L. D. 199.

This section provides that where placer claims are upon surveyed lands and conform to legal subdivisions no further survey or plat is required, and all placer claims shall conform as nearly as practicable to the public land surveys, and no location shall include more than 20 acres for each individual claimant; and where placer claims can not be conformed to legal subdivisions then a survey and plat shall be made as of mineral lands.

Khern, In re, 6 L. D. 580.

Gerhauser, In re, 7 L. D. 390.

Draper v. Wells, 25 L. D. 550, p. 555.

McNabb, In re, 42 L. D. 413, p. 416.

Ventura Coast Oil Co., In re, 42 L. D. 453, p. 454.

See Head, In re, 40 L. D. 135, p. 137.

The term "further survey or plat" used in this section has reference to the survey and plat required on application for patent.

Worthen v. Sidway, 72 Ark. 215, p. 224.

Placer mining claims located after May 10, 1872, must conform as near as practicable with the public land surveys and the rectangular subdivisions thereof, but when this can not be done an official survey and plat must be made.

Holmes Placer, In re, 29 L. D. 368.

A mineral claimant who deeds his land to the State relinquishes the land in conflict included in the survey, and as the patent must issue on the description as shown by the survey, an amended survey and field notes and plat become necessary.

Kimberly Placer, 27 L. D. 121.

An application for patent for a placer mining claim embracing a portion of an irregular legal subdivision from the description of which it would be impossible to identify the land must be accompanied by a survey and plat as required.

Chicago Placer Min. Claim, In re, 34 L. D. 9, p. 11.

McNabb, In re, 42 L. D. 413, p. 416.

C. LOCATIONS ON UNSURVEYED LANDS.

Under the provisions of the mining laws and the mining regulations a placer claim upon unsurveyed public lands must be located upon the ground in such shape and position as to conform as nearly as practicable to the system of public land surveys, and the rectangular subdivisions thereof, and the rule applies whether the claim is upon surveyed or unsurveyed public lands.

Wood Placer Min. Co., In re, 32 L. D. 198, p. 199.

Wood Placer Min. Co., In re, 32 L. D. 363, on review.

See Miller Placer Claim, In re, 30 L. D. 225, p. 227.

Wood Placer Min. Co., In re, 32 L. D. 401, p. 402.

A placer mining claim upon unsurveyed lands, under this section, is only indirectly affected by the preceding section relating to the form of placer claim located upon surveyed lands.

Ferrell v. Hoge, 29 L. D. 12, p. 15.

While placer claims on unsurveyed lands were formerly permitted to pass to patent without regard to their conforming to the public surveys, yet under the specific statutory requirement, and in connection with the gradual diminution of the public domain, the department must require, and especially where the topography of the adjacent ground is not such as to make it impracticable to define the locations in conformity with the system of the public land surveys, and make the claim rectangular in form and of dimensions corresponding to appropriate legal subdivisions, and with east-and-west and north-and-south boundary lines.

Laughing Water Placer, In re, 34 L. D. 56, p. 58.

See Miller Placer Claim, In re, 30 L. D. 225.

Wood Placer Min. Co., In re, 32 L. D. 363.

There is no difficulty in applying the rule requiring placer claims on unsurveyed lands to correspond to the system of surveys, and it may be done by locating such claim in rectangular form of lawful dimensions with east-and-west and north-and-south boundary lines.

Roman Placer Min. Co., In re, 34 L. D. 260, p. 262.

This section applies to placer locations, both upon surveyed and unsurveyed lands, and when applied to unsurveyed lands means that such claims, if practicable, shall have east-and-west and north-and-south bounding lines and should be rectangular, if practicable, and in compact form.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 256.

The mining laws make special provision for the survey of placer claims not on surveyed lands or which can not be conformed to legal subdivisions, and the return of the surveyor general as to the quantity of land embraced in such a claim is to be taken as conclusive.

Mary Darling Placer Claim, In re, 31 L. D. 64, p. 66.

Green v. Gavin, 10 Cal. App. 330, p. 335.

This section gives no authority for placing the lines of a placer mining location upon previously patented or entered lands, where such location is made upon the unsurveyed lands of the public domain.

Golden Chief "A" Placer Claim, In re, 35 L. D. 557.

Modifying Rialto No. 2 Placer Min. Claim, In re, 34 L. D. 44.

See Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 254.

D. POSSESSORY RIGHTS—EFFECT OF TEMPORARY ABSENCE.

Where a placer mining claim is so marked upon the ground that its boundaries can be readily traced, and notice of such location duly recorded, and the locator is in the possession and working the claim, a temporary suspension of such work for a few days for the purpose of procuring tools and necessary supplies to continue the work in good faith for the diligent and bona fide prosecution of such work does not constitute a break in the plaintiff's actual possession, and he is entitled to protection against an intruder under such circumstances.

Hanson v. Craig, 161 Fed. 861, p. 863.

See Hanson v. Craig, 170 Fed. 62.

E. HOMESTEAD AND MINERAL CLAIMANTS—RELATIVE RIGHTS.

The fact that a mineral claimant has conducted profitable mining operations upon one corner of his placer location gives him no right *ipso facto* as against the homestead claimant for another part of such claim lying in a different quarter section and which was *prima facie* nonmineral under the previous decision.

Montgomery v. Gilbert, 26 L. D. 216.

**F. REPRESENTATION WORK—VALUE OF IMPROVEMENTS—
APPORTIONMENT.**

Where it is satisfactorily shown that an area embraced in a placer location, or in a group of locations held in common, contain deposits which can be more economically worked by means of a mining dredge than otherwise, and that the owner of such a group has in good faith purchased and actually placed in working order thereon a dredge for working such deposit, and that such dredge has not been used as the basis for patent for any other area, then it may be regarded as a mining improvement and the cost thereof accredited to the group of claims as a part of the statutory expenditure.

Garden Gulch Bar Placer, In re, 38 L. D. 28, p. 32.

Where marble can be mined more economically through an existing excavation than through an independent plan of development, then a proportionate share of the cost of such improvement may be applied in satisfaction of the statutory requirement.

American Onyx & Marble Co., In re, 42 L. D. 417, p. 419.

Where a group of placer mining claims contain marble so near the surface as to be most advantageously removed by means of quarrying, an excavation made upon one of such claims is not such an improvement as may be accepted in satisfaction of the statutory requirement.

Cassel, In re, 32 L. D. 85.

See American Onyx & Marble Co., In re, 42 L. D. 417, p. 419.

G. PLACER GROUND—BEDS OF STREAMS.

The beds of unnavigable streams containing mineral deposits may be appropriated for mining purposes by placer locations, and as to the water itself, the locator obtains only a usufruct therein.

Rablin, In re, 2 L. D. 764, p. 765.

See Snow Flake Fraction placer, In re, 37 L. D. 250, p. 251.

SECTION 2332, REVISED STATUTES.

Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

This is the same as section 13, act of July 9, 1870 (16 Stat. 217), p. 670.

A. PURPOSE AND APPLICATION OF SECTION.

B. ADVERSE POSSESSION, p. 548.

C. RIGHTS PROTECTED, p. 550.

D. APPLICATION FOR PATENT, p. 550.

E. ADVERSE CLAIMS—EFFECT ON POSSESSORY TITLE, p. 553.

A. PURPOSE AND APPLICATION OF SECTION.

The purpose of this section was to lessen the burden of proving the location and transfers of old mining claims where the record title might be lost, and it applied originally to placer claims only; but it is not intended as a separate and independent provision for the patenting of mining claims, and it now relates to both lode and placer claims, and is a part of the body of the mining law, and, properly construed with section 2325, its purpose was to declare that evidence of holding and working of mining claims for a period equal to the local statute of limitations should be sufficient to establish the location of the claim and the applicant's right, in the absence of any adverse claim, but it does not prescribe any method for ascertaining whether an adverse claim exists; and this section was not intended to dispense with the requirements of section 2325 whereby the existence of an adverse claim is made known to the Land Department and protection accorded to adverse rights.

Barklage v. Russell, 29 L. D. 401, p. 405.

Brady v. Harris, 29 L. D. 426, p. 432.

Little Emily Min., etc., Co., In re, 34 L. D. 182, p. 185.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 120.

See *Gaffney v. Turner*, 29 L. D. 470, p. 473.

Overruling *Stewart v. Rees*, 21 L. D. 446.

This section provides an additional mode of acquiring a mining claim but does not enlarge the class who can acquire such claims.

Anthony v. Jillson, 83 Cal. 296, p. 302.

This section was enacted to prevent an applicant from failing to obtain a patent for his mining claim because of defects in his claim, when he had held a long undisputed possession, and no one had opposed him; and the land office was accordingly authorized to omit some of the strict proof required from an ordinary applicant in consideration that there was no opposition to the application.

McCowan v. McClay, 16 Mont. 234, p. 241.

The language of this statute does not indicate that Congress intended to restrict its provisions to cases where the applicant for patent is unable, by reason of lapse of

time, or the loss of the mining records, to furnish the required proof of possessory title and the regulations prescribed by the department do not so construe the section, but merely state that its provisions will greatly lessen the burden of proof, especially in cases of old claims.

Little Emily Min, etc., Co., 34 L. D. 182, p. 184.

The words "such person or association," in this section, refer to the persons and associations which have been the subject of treatment in the preceding sections, and mean the persons and associations who have complied with the terms of the law and are applying for patent for mining claims.

McCowan v. McClay, 16 Mont. 234, p. 240.

This section is not available in an action brought in support of an adverse claim unless the proof of possession is sufficient upon which to presume that all steps necessary to effect a location had been taken.

Bismarck Mountain, etc., Min. Co. v. North Sunbeam, etc., Min. Co., 14 Idaho 516, p. 531.

See *Cleary v. Skiffich*, 28 Colo. 362.

B. ADVERSE POSSESSION.

1. POSSESSION FOR PERIOD OF LIMITATIONS.
2. PERIOD OF LIMITATIONS—MEANING.
3. BREAK IN POSSESSORY TITLE—EFFECT.

1. POSSESSION FOR PERIOD OF LIMITATIONS.

An adverse possession under this section continued for a period equal to the time prescribed by the local statute of limitations will entitle the person so holding to a patent.

Belk v. Meagher, 104 U. S. 279, p. 286.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 587.

Horst v. Shea, 23 Mont. 390, p. 397.

A mining claim held and worked for a period equal to the time prescribed by the statute of limitations is equivalent to a location under the mining laws; but on application for patent the applicant must show also the performing of the necessary assessment work and his citizenship.

Altoona Quicksilver Min. Co. v. Integral Quicksilver Min. Co., 114 Cal. 100, p. 105.

Cleary v. Skiffich, 28 Colo. 362, p. 365.

Humphreys v. Idaho Gold Mines, etc., Co., 21 Idaho, 126, p. 138.

See *Belk v. Meagher*, 104 U. S. 279.

Harris v. Equator Min., etc., Co., 8 Fed. 863.

Anthony v. Jillson, 83 Cal. 296.

McCowan v. McClay, 16 Mont. 234.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 122.

The working of a mining claim for the statutory period is equivalent to a valid location under the act of Congress; but the locator must prove the performance of the necessary work and also his citizenship.

Donnelly v. United States, 228 U. S. 243, p. 266.

Barklage v. Russell, 29 L. D. 401, p. 404.

Gaffney v. Turner, 29 L. D. 470, p. 472.

Humphreys v. Idaho Gold Mines, etc., Co., 21 Idaho 126, p. 138.

McCowan v. McClay, 16 Mont. 234, p. 239.

See *Capital No. 5 Placer Min. Claim*, In re, 34 L. D. 462.

Cleary v. Skiffich, 28 Colo. 362.

A good and enforceable right may be secured if there is a peaceable entry made upon lands not inclosed or improved though claimed by a prior locator.

Belk v. Meagher, 104 U. S. 279, p. 287.

Where a claimant has been in possession and worked his claim for the period described by the statute of limitations for mining claims in Montana prior to the relocation by the protestants, he is entitled, as against the protestants, to have the claim pass to patent.

Stewart v. Rees, 21 L. D. 446, p. 450.

See *Glacier Mountain Silver Min. Co. v. Willis*, 127 U. S. 471.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240.

Cain v. Addenda Min. Co., 24 L. D. 18, p. 21.

Stewart v. Rees, 25 L. D. 447.

Barklage v. Russell, 29 L. D. 401.

Cain v. Addenda Min. Co., 29 L. D. 62, p. 65.

McGowan v. McClay, 16 Mont. 234, p. 239 distinguishing *Glacier Mountain Silver Min. Co. v. Willis*, 127 U. S. 471.

An adverse holding of a mining claim for a period equal to the statute of limitation creates a valid claim against everyone except the United States.

Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, p. 538.

See *Four Hundred Twenty Min. Co. v. Bullion Min. Co.*, 9 Fed. Cas. 592.

Harris v. Equator Min. Co., 8 Fed. Cas. 863.

Francoeuer v. Newhouse, 43 Fed. 236.

Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471.

This section makes the local statute of limitations for mining claims of a state, for certain purposes, applicable to mining claims under the United States.

Butte City Water Co. v. Baker, 196 U. S. 119, p. 123.

Lavagnino v. Uhlig, 198 U. S. 443, p. 449.

2. PERIOD OF LIMITATIONS—MEANING.

The time prescribed by the statute of limitations for mining claims, within the meaning of this section, in California is five years.

Cain v. Addenda Min. Co., 24 L. D. 18, p. 21.

A mining claim in California is real estate, and the period of limitation as to actions for the recovery of real estate is five years.

Melton v. Lambard, 51 Cal. 258.

Cain v. Addenda Min. Co., 24 L. D. 18, p. 21.

A mineral claimant having held and worked his claim continuously for more than five years immediately preceding an alleged relocation is, under this section, entitled to have the same passed to patent.

Cain v. Addenda Min. Co., 24 L. D. 18, p. 21.

See *Stewart v. Rees*, 21 L. D. 446.

3. BREAK IN POSSESSORY TITLE—EFFECT.

A peaceable adverse entry, coupled with the right to hold the possession thereby acquired, operates as an ouster and breaks the continuity of the holding of the prior locator and deprives him of the title he might have acquired if he had kept possession for the requisite length of time.

Belk v. Meagher, 104 U. S. 279, p. 287.

The fact that a prospector went upon a disputed area of a placer claim from time to time to prospect for gold and did sink shafts and run tunnels, and dug up the earth at different places within such area, but did not for any definite period or great length of time beyond 18 months or 2 years, mine in any definite locality, but shifted about from place to place, digging holes in different places, panning for colors, hoping to make discovery at some point, but making no discovery in paying quantities, and expending no large sum of money on such explorations, does not constitute such actual unbroken possession of any specifically defined locality as to constitute such actual,

exclusive, and continuous adverse possession as to give title under this section against a record owner who has regularly performed his assessment work from year to year.

Pacific Coal & Transportation Co. v. Pioneer Min. Co., 205 Fed. 577, p. 591.

A party can not claim the benefit of this section where he fails to show that he has held and worked his claim for a period equal to the time prescribed by the local statute of limitations for mining claims.

Anthony v. Jillson, 83 Cal. 296, p. 301.

C. RIGHTS PROTECTED.

1. ASSIGNEES AND PURCHASERS PROTECTED.
2. LIENHOLDERS PROTECTED.

1. ASSIGNEES AND PURCHASERS PROTECTED.

Both Congress and the courts have endeavored to protect rights of locators of mining claims and their assignees where locations have been made and held in good faith, and the mining laws are liberally construed with a view of doing justice to the prospector and miner acting in good faith.

Bismark Mtn. Gold Min. Co. v. North Sunbeam Gold Min. Co., 14 Idaho 516, p. 532.

This section does not require that adverse possession contemplated shall be continuous in any one person, but it is sufficient if the person or his grantor have held and worked the claim for a period equal to the time prescribed by the statute of limitations.

Warnekros, In re, 41 L. D. 653, p. 654.

This section clearly contemplates the buying and selling of mineral claims and it would be absurd to permit sales for the benefit of a vendee and then declare such sales proof of abandonment of all rights of the grantor.

Butte Hardware Co. v. Frank, 25 Mont. 344, p. 349.

This section approves the derivative right by purchase or assignment and authorizes a patent to issue to such purchaser or assignee.

Smelting Co. v. Kemp, 104 U. S. 636, p. 651.

An interest obtained by a purchaser at a constable's sale prior to the time of the publication of notice is an adverse claim that is waived if not asserted.

Butte Hardware Co. v. Frank, 25 Mont. 344, p. 350.

See *Hamilton v. Southern Nevada Gold, etc., Co.*, 33 Fed. 562.

2. LIEN HOLDERS PROTECTED.

This section protects liens which may have attached in any way to any mining claim or property prior to the issuance of a patent.

Butte Hardware Co. v. Frank, 25 Mont. 344, p. 350.

A judgment creditor having a lien on a mining claim is not bound, before sale and deed, to file an adverse claim in order to preserve his lien, as such liens are expressly protected by this section; but after execution is levied, a sale had, and a deed executed, the purchaser must adverse, as in that case the lien is gone.

Butte Hardware Co. v. Frank, 25 Mont. 344, p. 350.

D. APPLICATION FOR PATENT.

1. PRACTICE AND PROOF.
2. POSSESSORY RIGHT DETERMINED BY LOCAL CUSTOMS AND RULES.

3. COMPLIANCE WITH REQUIREMENTS.
4. PERFORMANCE OF REPRESENTATION WORK EXCUSED.
5. FAILURE TO PROSECUTE PATENT PROCEEDINGS.

1. PRACTICE AND PROOF.

This section relieves an applicant for patent from the necessity of proving a location by himself or his predecessor, but he must furnish a duly certified copy of the local statute of limitations and make a sworn statement of the facts as to the origin of his title, the continuation of his possession of the ground applied for, showing the area, the nature and the extent of the work done, and if an adverse claim is filed he must defend his rights in the court where the suit is brought by the adverse claimant by a proper proof of his possession.

Humphreys v. Idaho Gold Mines & Dev. Co., 21 Idaho 126, p. 139.

See *Four Hundred Twenty Min. Co. v. Bullion Min. Co.*, 9 Fed. Cas. 592.

Harris v. Equator Min., etc., Co., 8 Fed. 863.

All that is required under this section to establish the possessory title in the absence of any adverse claim is evidence sufficient to show that the claim was so held and worked for the time prescribed, and it makes no difference whether the record evidence of a location is in existence and might have been furnished or not, but if the applicant can make such showing he is not required to produce record evidence of his location or to give any reason for not producing it.

Capital No. 5 Placer Min. Claim, In re, 34 L. D. 462.

See *Little Emily Min., etc., Co.*, In re, 34 L. D. 182.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 122.

A mining claimant who has been in the open exclusive adverse possession of his mining claim for a continuous period equal to that of the local statute of limitations is not required to prove the posting and recording of a location notice or to make other proof usually required of the locator of a mining claim.

Humphreys v. Idaho Gold Mines & Dev. Co., 21 Idaho 126, p. 136.

Under this section it is not necessary for an applicant for patent for a mining claim to show the initiation of his right, but proof of possession and continuous working of the claim for a period equal to the local statute of limitations are sufficient in the absence of an adverse claim, and there can be no application of the doctrine of relation in such case.

Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, p. 65.

An applicant for patent for a placer claim is not required to furnish an abstract of title where the proof shows that he has held possession and worked the claim for a period equal to the time prescribed by the local statute of limitations.

McNabb, In re, 42 L. D. 413, p. 414.

2. POSSESSORY RIGHT DETERMINED BY LOCAL CUSTOMS AND RULES.

The right of possession of a mining claim under this section may be determined by local customs or rules of the miners in the mining districts, so far as the same are applicable or not inconsistent with the laws of the United States.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 508.

A controversy as to the right of possession under this section may not involve any question under the Constitution or laws of the United States, but simply a determination of local rules and customs, or State statute, or only a mere matter of fact.

Shoshone Min. Co. v. Rutter, 177 U. S. 505, p. 508.

The ultimate right of a locator to a patent depends entirely upon his keeping himself in and others out, and if he is not actually in possession he is in law out.

Belk v. Meagher, 104 U. S. 279, p. 287

3. COMPLIANCE WITH REQUIREMENTS.

A person holding possession of a mining claim under this statute is not exempted from performing the annual assessment work required of a locator under section 2324 Revised Statutes.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 124.

See *Glacier Mountain, etc., Min. Co. v. Willis*, 127 U. S. 471.

Anthony v. Jilson, 83 Cal. 296.

Risch v. Wiseman, 36 Oreg. 484.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240.

This section obviates the necessity of proof of posting and recording a notice of location where a mineral claimant has been in the actual open and exclusive possession of the claim for a period equal to that of the local statute of limitations, and the adverse possession referred to is intended to supply the place of an abstract of title, but such a claimant must have made a mineral discovery and performed the annual assessment work, and must have marked the boundaries of his claim sufficient to afford actual notice of the extent and boundaries of his claim and possession.

Humphreys v. Idaho Gold Mines & Dev. Co., 21 Idaho 126, p. 140.

This section in no manner relates to or involves any other matter included in patent proceedings and does not dispense with the requirements as to the expenditure of \$500 in labor or improvements upon the claim as a prerequisite to the issuance of a patent.

Capital No. 5 Placer Min. Claim, In re, 34 L. D. 462, p. 463.

Barklage v. Russell, 29 L. D. 401.

See *Upton v. Santa Rita Min. Co.*, 14 N. Mex. 96, p. 123.

The possessor of a mining claim, under this section, on application for patent is not exempted from the requirements of section 2325 Revised Statutes, and this section does not dispense with the requirements by which the existence of an adverse claim is made known to the Land Department and protection afforded to the adverse claimant, nor is such possessor relieved from the obligation and from the annual assessment work.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 121.

See *Barklage v. Russell*, 29 L. D. 401.

Brady v. Harris, 29 L. D. 426.

Gaffney v. Turner, 29 L. D. 470.

4. PERFORMANCE OF REPRESENTATION WORK EXCUSED.

A mineral claimant who, with his grantors, has held and worked his claim for a period equal to the time prescribed by the statute of limitations is not required to perform further assessment work, and in such case his title is not affected by the ruling requiring the completion of an application within a reasonable period after publication.

Coleman v. McKenzie, 29 L. D. 359, p. 362.

Where a claimant has held and worked his claim for the statutory period under local laws and in accordance with their requirements, these facts establish his right to a patent, in the absence of adverse claims, and the failure to expend \$500 upon the claim is no objection to the issuance of a patent.

Sears, In re, 8 C. L. O. 152, p. 153.

5. FAILURE TO PROSECUTE PATENT PROCEEDINGS.

This section does not apply to cases where the applicant fails to prosecute his application to completion within a reasonable time after the expiration of the period of publication.

Cain v. Addenda Min. Co., 29 L. D. 62.

Barklage v. Russell, 29 L. D. 401, p. 404.

E. ADVERSE CLAIMS—EFFECT ON POSSESSORY TITLE.

This section does not mean that the person holding the title as provided may obtain patent therefor, in the absence of an adverse claim filed within the period of the statute of limitations; but he is entitled to patent if no adverse claim is filed, as provided for in section 2325 Revised Statutes.

McCowan v. McClay, 16 Mont. 234, p. 241.

The words of this section "in the absence of any adverse claim" mean that patent shall be issued to a claimant who has held and worked his claim for a period equal to the time prescribed by the statute of limitations, if no other person filed what is known in the Land Office as an adverse claim, within the period within which an adverse claimant may file his claim under the mining laws.

McCowan v. McClay, 16 Mont. 234, p. 241.

Possession, under this statute, for the statutory period of limitation is equivalent to a valid location, but otherwise this section must be construed in relation to other sections of the mining law, and such possession does not entitle the possessor to a patent as against an adverse claim properly filed.

Upton v. Santa Rita Min. Co., 14 N. Mex. 96, p. 120.

Notwithstanding the provision of this section as to the holding of a mining claim for a period equal to the statute of limitation, yet if an adverse claimant appears to an application for patent, the contest must be referred to a court of competent jurisdiction for determination, as in other cases.

McCowan v. McClay, 16 Mont. 234, p. 241.

The signification of the words "adverse claim," in this and other sections of the mining law, is a claim filed in the United States Land Office opposing an application for patent to mining premises made by another person.

McCowan v. McClay, 16 Mont. 234, p. 239.

SECTION 2333, REVISED STATUTES.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of \$5 per acre for such vein or lode claim and 25 feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of \$2.50 per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section 2320, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Same as section 11, act of May 10, 1872 (17 Stat. 91, p. 95), p. 681.

A. PLACER AND LODGE CLAIMS.

B. APPLICATION OF SECTION TO VEINS WITHIN PLACER LIMITS, p. 556.

C. NATURE AND COINCIDENCE OF PLACER AND LODGE CLAIMS, p. 557.

D. RIGHT TO SURFACE CONFLICT GROUND, p. 557.

E. VEINS OR LODGES WITHIN PLACER CLAIMS, p. 558.

F. KNOWLEDGE OF VEIN OR LODGE, p. 560.

G. APPLICATION FOR PLACER PATENT, p. 563.

H. APPLICATION FOR LODGE AFTER PLACER PATENT, p. 566.

I. APPLICATION FOR PLACER AND LODGE, p. 568.

J. WIDTH OF LODGE CLAIM WITHIN PLACER LIMITS, p. 568.

K. ADVERSE PROCEEDINGS—PLACER AND LODGE CLAIMANTS, p. 569.

L. PATENT FOR PLACER CLAIM, p. 570.

A. PLACER AND LODGE CLAIMS.

1. RELATIVE RIGHTS OF PLACER AND LODGE CLAIMANTS.

2. PLACER CLAIM DEFINED.

3. REGULATION OF PLACER CLAIMS.

1. RELATIVE RIGHTS OF PLACER AND LODGE CLAIMANTS.

This section defines the proceedings necessary for the adjustment of the relative rights of owners of lode and placer claims and is substantially the same as section 11 of the act of May 10, 1872 (17 Stat. 91).

Moxon v. Wilkinson, 2 Mont. 421, p. 425.

The amount of land which may be taken up as a placer claim and the amount as a lode claim, and the price per acre to be paid when patents are obtained are different, and the rights conferred by the respective patents and the conditions upon which they are held are also different.

Pike's Peak Lode, In re, 10 L. D. 200, p. 205.

United States v. Iron Silver Min. Co., 128 U. S. 673.

This section is founded upon the well known and universally recognized difference in the character of vein, or lode deposits, and placer deposits, and Congress has fixed the price of each according to the relative value.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 100.

See Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 697.

Vein or lode deposits and placer deposits may exist in the same superficial area, and they may be discovered, located, and claimed by the same or different persons, and patented accordingly.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 99.

See Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 697.

South Star Lode, In re, 20 L. D. 204.

The terms "vein or lode" and "vein or lode claim" is used indiscriminately and interchangeably throughout this section, and it follows that the term "vein or lode" is intended to be synonymous with the term "vein or lode claim" as used in the section.

Iron Silver Min. Co. v. Sullivan, 16 Fed. 830, p. 832.

The object of the statute is to convey the minerals in the land, and the separate conveyance of a placer claim is not such a disposition of all interest in the land as to deprive the department of jurisdiction where a lode claim does not pass by the patent.

South Star Lode, In re, 20 L. D. 204, p. 210.

The law does not give to lode claimants a right of way through an intersecting placer claim.

Silver Queen Lode, In re, 16 L. D. 186.

2. PLACER CLAIM DEFINED.

Placer mines are those in which the minerals are generally found in the softer material which covers the earth's surface and not among the rocks beneath. The method of mining such a claim is to take the soft earthy matter in which the particles of mineral are loosely mingled and separate them by filtration.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 695.

By the term "placer claim," as used in this section, is meant ground with defined boundaries which contains mineral in the earth, sand, or gravel; ground that includes valuable deposits not fixed in rock.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 679.

Wheeler v. Smith, 5 Wash. 704, p. 707.

A placer location is not a location of lodes or veins underneath the surface, but is simply a claim of a tract or parcel of ground for the sake of loose deposits of mineral near the surface.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 228.

A placer claim differs from a lode claim in the amount of land which may be taken, the price per acre to be paid, and the rights conferred by the respective patents and the conditions upon which they are held.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 680.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 695.

Largey, In re, 17 C. L. O. 3, p. 4.

The last clause of this section evidently intends that any placer claim not embracing any vein or lode claim shall be considered as a placer claim and not as a claim for veins or lodes.

Iron Silver Min. Co. v. Sullivan, 16 Fed. 830, p. 832.

3. REGULATION OF PLACER CLAIMS.

Placer claims were first regulated by the statute of July 9, 1870 (16 Stat. 217). Smelting Co. v. Kemp, 104 U. S. 636, p. 650.

The purpose of this section is to place the location of placer claims on an equality, both in procedure and rights, with lode claims.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 227.

This section was primarily intended for the benefit and protection of locators of placer claims.

Migeon v. Montana, etc., R. Co., 77 Fed. 249, p. 256.

Casey v. Thieviege, 19 Mont. 341, p. 346.

This section makes specific provision for both placer and vein or lode claims falling within the same boundaries.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 695.

The purpose of this section is to require good faith on the part of a placer claimant, so that he may not, under cover of a large area of land acquired as a placer claim, obtain title to quartz deposits also without making the proper claim therefor and the additional payment required by law for the lands containing them.

Noyes v. Clifford, 37 Mont. 138, p. 153.

B. APPLICATION OF SECTION TO VEINS WITHIN PLACER LIMITS.

This section has no application to lodes or veins within the boundaries of a placer claim which have been previously located and are in the possession of the locator or of his assigns, as such locations are the property of the locator or of his grantees; but the section applies only to lodes or veins not taken up or located so as to become the property of others, and veins not thus owned and known to exist must be included in the application for a placer patent or they will be waived by the applicant.

Sullivan v. Iron Silver Min. Co., 109 U. S. 550, p. 552.

Noyes v. Mantle, 127 U. S. 348, p. 353.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 103.

Mt. Rosa Min., etc., Co. v. Palmer, 26 Colo. 56, p. 63.

Clipper Min. Co. v. Eli Min., etc., Co., 29 Colo. 377, p. 383.

McConaghy v. Doyle, 32 Colo. 92, p. 102.

Horsky v. Moran, 21 Mont. 345, p. 349.

McCarthy v. Speed, 11 S. Dak. 362, p. 368.

See Shonbar Lode, In re, 1 L. D. 551.

Shonbar Lode, In re, 3 L. D. 388.

Largey, In re, 17 C. L. O. 3.

This section does not apply to lodes or veins within the boundaries of a placer claim located previously under the United States statutes and not in the possession of such locator, but it only applies to lodes or veins not taken up and located so as to become the property of others.

Pike's Peak Lode, In re, 10 L. D. 200, p. 202.

See Reynolds v. Iron Silver Min. Co., 116 U. S. 687.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

This section makes provision for the ownership of a mineral vein or lode having its apex within the area of a tract whose surface is valuable for placer mining.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 227.

This section is not in conflict with section 2320 of the Revised Statutes, but is intended to refer to lode claims found only within the limits of a placer location, while the other section refers to lode locations generally, exclusive of those within the limits of a placer claim.

Mt. Rosa Min., etc., Co., v. Palmer 28 Colo. 56, p. 65.

C. NATURE AND COINCIDENCE OF PLACER AND LODGE CLAIMS.

The two classes of mineral deposits known as vein or lodes and placer claims are so different in character and formation, and so completely separate and distinct from each other, that even when found to exist in the same superficial area, they may be located and held by different persons and patented accordingly.

Henderson v. Fulton, 35 L. D. 652, p. 655.

See *Reynolds v. Iron Silver Min. Co.*, 116 U. S. 687, p. 695.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, pp. 99-100.

Daphne Lode Claim. In re, 32 L. D. 513.

Jaw Bone Lode v. Damon Placer, 34 L. D. 72.

Veins or lodes and placer deposits are frequently found to exist in the same land, and it is no objection to the validity of a placer claim that it embraces veins or lodes as well as placer deposits.

Hogan & Idaho Min. Claims, In re, 34 L. D. 42, p. 43.

From this statute Congress evidently considered that the vein of mineral-bearing quartz was more valuable than the surface or placer deposit, as indicated by the difference in price per acre and the quantity limited to each applicant.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 695.

Noyes v. Mantle, 127 U. S. 348, p. 352.

A placer claim not embracing any vein or lode claim, or that part of a placer claim not included also in a vein or lode claim, is to be paid for by the locator at a different price per acre from that including the vein or lode claim.

Iron Silver Min. Co. v. Sullivan, 16 Fed. 830.

The fact that land is held as a placer claim does not necessarily prevent lode locations from being made thereon.

Hughes v. Ochsner, 27 L. D. 396, p. 398.

In case of a placer deposit and in the absence of a lode within the limits of the claim the lode laws have no application, but the land is subject to entry and patent exclusively under the provisions of the placer mining laws.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 406.

D. RIGHT TO SURFACE CONFLICT GROUND.

The surface ground being only an incident to a lode location, and not a part of it, a placer claimant, in which such lode location exists, is entitled to the surface area within the overlap, except so much thereof as is necessary to the occupation, use, operation, and enjoyment of the lode claim by its owner, and this may be more or less, according to the extent and location of any improvements and other conditions peculiar to a particular claim; and the superior right of a lode claimant to the possession of his lode, within a placer claim, should not be permitted to carry with it more surface ground within the overlap than is necessary for the occupation, use, operation, and full enjoyment thereof, and where the possessory right to the placer claim has been awarded the placer applicant by the judgment of a proper court.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 105.

See *Elda Min., etc., Co. v. Mayflower Gold Min. Co.*, 26 L. D. 573, p. 574.

Cape May Min. & Leasing Co. v. Wallace, 27 L. D. 676, p. 679.

The fact that the surface area in conflict was claimed under a lode location prior to a placer location is not in itself controlling, for if the vein or lode was not known to exist within the placer boundaries at that time it was conveyed to the placer claimant by the placer patent.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

E. VEINS OR LODS WITHIN PLACER CLAIMS.

1. KNOWN VEINS OR LODS—MEANING.
2. WHAT CONSTITUTES A VEIN OR LODE WITHIN MEANING OF SECTION.
3. TIME WHEN VEIN OR LODE IS KNOWN TO EXIST.
4. KNOWN VEIN OR LODE OUTSIDE OF PLACER LIMITS—EFFECT.

1. KNOWN VEINS OR LODS—MEANING.

A regular location is not necessary before a vein or lode can be a "known vein or lode" within the meaning of this section.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

Noyes v. Mantle, 127 U. S. 348.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394.

Overruling Iron Silver Min. Co. v. Sullivan, 16 Fed. 830.

The statute does not except veins or lodes "claimed or known to exist," but only such as are known to exist, and it fixes the time at which such knowledge is to be had as that of the application for the patent, and not that of the date of the patent, to take the vein or lode out of its grant.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, p. 382.

Discovery Placer Claim v. Murry, 25 L. D. 460, p. 463.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

The term "known vein" is not to be taken as synonymous with "located vein," and refers to a vein or lode whose existence is known as distinguished from one which has been appropriated by location.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 400.

Noyes v. Mantle, 127 U. S. 348, p. 353.

Cleary v. Skiffich, 28 Colo. 362, p. 368.

McConaghy v. Doyle, 32 Colo. 92, p. 98.

Horsky v. Moran, 21 Mont. 345, p. 349.

Where the existence of a vein or lode within a placer claim is otherwise unknown its existence is not made known by mere inclusion of the ground within a lode location.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

To constitute a known vein or lode within the meaning of this section, the lode or vein must be clearly ascertained and be of such extent as to render the land more valuable on that account and justify its exploitation, and it is not enough that there may have been some indications by outcroppings on the surface of the existence of lodes or veins of rock in place.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 683.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

Casey v. Thievege, 19 Mont. 341, p. 347.

McConaghy v. Doyle, 32 Colo. 92, p. 97.

In a placer patent there are excepted and reserved by the terms of the particular statutes regulating placer claims, from the conveyance, any vein or lode within the placer claim known to exist at the date of the application for patent, and any prior or valid quartz location within such area is also excepted.

Horsky v. Moran, 21 Mont. 345, p. 350.

2. WHAT CONSTITUTES A VEIN OR LODGE WITHIN MEANING OF SECTION.

A lode or vein, within the meaning of this section, is a body of mineral or mineral-bearing rock within defined boundaries in the general mass of the mountain.

Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, p. 536.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 404.

Not every crevice in the rocks, nor every outcropping on the surface, which suggests the possibility of mineral, or which may, on subsequent exploration, be found to develop ore of great value, can be adjudged a known vein or lode within the meaning of the statute.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 404.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 626.

By "veins or lodes" is meant lines or aggregations of metal embedded in quartz or other rock in place, and both are intended to indicate the presence of metal in rock, although a lode may and often does contain more than one vein.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 679.

See Henderson v. Fulton, 35 L. D. 652, p. 657.

It is not enough that there is some indication by outcroppings on the surface of the existence of a lode or vein to justify their designation as known veins or lodes, but to be such they must be clearly ascertained and be of such extent as to render the land more valuable on that account and justify their exploitation.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 683.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 404.

See Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 815.

Migeon v. Montana, etc., R. Co., 77 Fed. 249, p. 256.

Brownfield v. Bier, 15 Mont. 403.

Neither this nor any other section of the mining law undertakes to define the meaning of the terms "vein" and "lode," or to indicate the extent or value of the minerals necessary to bring the lands within which they were found within the terms of the reservation.

Noyes v. Clifford, 37 Mont. 138, p. 148.

A quartz claimant is not required in all cases to show that a vein or lode within the limits of a placer claim was known to contain at the time of the application for placer patent ore of such extent and value that it could be extracted with profit without previous exploitation.

Noyes v. Clifford, 37 Mont. 138, p. 152.

See Kift v. Mason, 42 Mont., 232, p. 237.

3. TIME WHEN VEIN OR LODGE IS KNOWN TO EXIST.

A known lode within the provisions of 2333 R. S. is one known to exist at the time the application for patent is made, and to contain mineral in such quantity as to justify expenditures for the purpose of extracting them.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, p. 382.

Montana Central R. Co. v. Migeon, 68 Fed. 811.

Brownfield v. Bier, 5 Mont. 403.

Mount Rosa Min., etc., Co. v. Palmer, 26 Colo. 56, p. 58.

Discovery Placer Claim v. Murry, 25 L. D. 460, p. 463.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

The time at which a vein or lode within a placer claim must be known to exist in order to except it from the patent is the time at which the application is made.

Maggie Lode, In re, 14 L. D. 654, p. 655.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394.

4. KNOWN VEIN OR LODGE OUTSIDE OF PLACER LIMITS—EFFECT.

The location of a vein or lode based upon a discovery made outside of the boundaries of a placer patent, and some 200 feet therefrom, does not give it the status of a known vein or lode within the meaning of the statute.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

The discovery of a vein or lode two or three hundred feet outside of the boundaries of a placer claim does not create any presumption of the possession of a vein or lode within those boundaries, nor that a vein or lode existed within them.

Dahl v. Raunheim, 132 U. S. 260, p. 263.

Discovery Placer Claim v. Murry, 25 L. D. 460, p. 464.

Raunheim v. Dahl, 6 Mont. 167, p. 169.

Washoe Copper Co. v. Junila, 43 Mont. 178, p. 187.

See Butte & Boston Min. Co. v. Sloan, 16 Mont. 97.

F. KNOWLEDGE OF VEIN OR LODGE.

1. WHAT CONSTITUTES—DUTY AND PRESUMPTION.
2. THEORY OR BELIEF INSUFFICIENT.
3. LOCATION MARKED ON GROUND AS KNOWLEDGE.
4. RECORD OF LODGE LOCATION AS KNOWLEDGE.
5. BURDEN OF PROOF AS TO KNOWN VEIN.

1. WHAT CONSTITUTES—DUTY AND PRESUMPTION.

It is not necessary to trace the knowledge of a vein or lode to the applicant for a patent for the placer claim, but a general knowledge of its existence is sufficient, though personal knowledge of the fact may not be possessed by the applicant.

Noyes v. Mantle, 127 U. S. 348, p. 353.

See Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

Dahl v. Raunheim, 132 U. S. 260, p. 262.

Pike's Peak Lode, In re, 10 L. D. 200.

A vein or lode is known to exist within the meaning of this section when it could be discovered or when it is obvious to anyone making a reasonable and fair inspection of the premises for the purpose of a location.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 403.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 815.

Mutchmor v. McCarthy, 149 Cal. 603, p. 611.

Brownfield v. Bier, 15 Mont. 403, p. 409.

An applicant for a placer claim must be adjudged to know that which others know and which he would have ascertained on the proper or required inspection of the premises in the proper discharge of his duty as the locator of the claim.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 403.

Casey v. Thieviege, 19 Mont. 341, p. 347.

Washoe Copper Co. v. Junila, 43 Mont. 178, p. 184.

See Brownfield v. Bier, 15 Mont. 403.

A person has no right to locate a placer claim until he has made such an inspection as to enable him to make affidavit that it is adapted to such mining and when such an examination will disclose the existence of a tunnel cutting a lode or vein, then such lode or vein is known to exist within the meaning of this section.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 402.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 815.

The theory of the statute is that a vein or lode of quartz may exist in placer ground that is unknown; but if a discovery of any such vein or lode has been made within the placer boundaries, and in pursuance thereof a lode claim has been properly located,

then the applicant for a placer patent will be presumed to know of the existence of such lode or vein.

Mantle v. Noyes, 5 Mont. 274, p. 289.

Raunheim v. Dahl, 6 Mont. 167, p. 169.

A mining claim properly located, owned, and held, and not abandoned or forfeited in any way, is known to exist within the meaning of the statute.

Mantle v. Noyes, 5 Mont. 274, p. 292.

An applicant for a placer patent is chargeable with notice of the existence of a tunnel and with notice of whatever a casual inspection of such tunnel will disclose.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 403.

Under this section it requires stronger evidence of a known vein or lode than is required by the same courts for the location of a valid claim under section 2320, at least between parties claiming the same land for different purposes.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 814.

United States v. Iron Silver Min. Co., 128 U. S. 673; 9 Sup. Ct. 195.

See *Cleary v. Skiffich*, 28 Colo. 362, p. 368.

McConaghy v. Doyle, 32 Colo. 92, p. 98.

Knowledge of the existence of a vein or lode within the boundaries of a placer claim may be obtained from its outcrop within such boundaries, or from the developments of the placer claim previous to the application for a patent, or by the tracing of the vein from another lode, or from the general condition and developments of mining ground adjoining the placer claim, or from the information of others who have made the necessary explorations to ascertain the fact; but however such knowledge may be acquired it must be knowledge as distinguished from belief, whether based on examination or otherwise, in order to bring a case within the meaning of this section.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, p. 384.

Discovery Placer Claim v. Murry, 25 L. D. 460, p. 463.

2. THEORY OR BELIEF INSUFFICIENT.

A mere belief, though entertained generally in a community, or by the placer patentee alone, of the existence of a horizontal vein or deposit, sometimes called a blanket vein, is not sufficient to prove that such vein is known to exist within the meaning of this section.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431, p. 435.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 626.

Migeon v. Montana Central R. Co., 77 Fed. 249.

Casey v. Thieviege, 19 Mont. 341, p. 347.

A mere speculative belief of the existence of minerals based not on any discoveries in a placer tract or any tracings of a vein or lode adjacent thereto, but on the bare fact that a number of shafts sunk elsewhere in the district had disclosed horizontal deposits of a particular kind of ore supposed to be parts of a single vein of continuous extension through all the particular territory, is not the knowledge required by this section.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431, p. 435.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 626.

Migeon v. Montana Central R. Co., 77 Fed. 249.

On the question of the known existence of an existing vein or lode within the meaning of this statute, a wide difference is made between mere belief and knowledge, and these terms can not be made synonymous and thereby incorporate new terms into the statute.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

Sullivan v. Iron Silver Min. Co., 109 U. S. 550, p. 554.

Casey v. Thieviege, 19 Mont. 341, p. 347.

Theory or belief can not be relied upon as sufficient to warrant the department in issuing a patent for a vein or lode within the boundaries of a patented placer claim, but there must be actual knowledge of the existence of such vein or lode at the time of the application for the placer patent brought home to the placer patentee.

Discovery Placer Claim v. Murry, 25 L. D. 460, p. 463.

3. LOCATION MARKED ON GROUND AS KNOWLEDGE.

Where there is a valid location of a vein or lode and its boundaries are specifically marked on the surface so as to be readily traced, and notice of the location is properly recorded in the usual books of record, the vein or lode is then known to exist, though personal knowledge of the fact may not be possessed by the applicant for a patent of a placer claim, but the information which the law requires the locator to give to the public is sufficient to acquaint the applicant himself with the existence of the vein or lode.

Noyes v. Mantle, 127 U. S. 348, p. 354.

Pike's Peak Lode, In re, 10 L. D. 200, p. 203.

Reynolds v. Iron Silver Min. Co., 116 U. S. 637.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

Pike's Peak Lode, In re, 14 L. D. 47, p. 48.

Duffy Quartz Mine, In re, 18 L. D. 259, p. 260.

Aspen Consol. Min. Co. v. Williams, 23 L. D. 34, p. 49.

Wilson Creek Consol. Min., etc., Co. v. Montgomery, 23 L. D. 476.

Largey, In re, 17 C. L. O. 3.

The marking of a lode claim upon the ground and the recording of a location notice may actually or constructively extend to others the knowledge upon which the lode claimants based their location, but it can not make known a vein or lode the existence of which is otherwise altogether unknown.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

4. RECORD OF LODGE LOCATION AS KNOWLEDGE.

A recorded notice of a so-called lode location is not conclusively presumptive of the existence of a valuable lode or vein within its limits where there has in fact been no prior discovery of a valuable vein or lode therein.

Wilson Creek Consol. Min., etc., Co. v. Montgomery, 23 L. D. 476, p. 477.

But a mere notice standing of record of a so-called location made regardless of the discovery of a valuable vein or lode, or of a location long since abandoned, is not a notice to an applicant for a placer patent of the existence of a vein or lode.

Wilson Creek Consol. Min., etc., Co. v. Montgomery, 23 L. D. 476, p. 477.

The department can not assume that a known lode exists simply because the lode location antedates that of the placer, especially if the placer claim has been patented, and it will be presumed that the statutory affidavits were made by the placer applicant to the effect that there were no known veins or lodes within its area.

Valley Lode, In re, 22 L. D. 317, p. 318.

5. BURDEN OF PROOF AS TO KNOWN VEIN.

The burden of proof is on the lode claimant to show that the vein which he claims is exempt from a placer location by operation of law, and is of the character that will render it a known vein.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 628.

McConaghy v. Doyle, 32 Colo. 92, p. 97.

G. APPLICATION FOR PLACER PATENT.

1. SHOWING AS TO EXISTENCE OF VEIN OR LODGE.
2. APPLICATION SUPPORTED BY AFFIDAVIT.
3. FAILURE TO INCLUDE KNOWN VEINS OR LODGES—WAIVER.
4. VEIN OR LODGE NOT KNOWN—EFFECT.
5. EXISTENCE OF VEIN OR LODGE A QUESTION OF FACT.
6. CONCLUSIVENESS OF APPLICATION AS TO KNOWN VEIN.

1. SHOWING AS TO EXISTENCE OF VEIN OR LODGE.

An applicant for a placer patent, who is at the time in possession of a vein or lode within its boundaries, must state such fact in his application, and on payment of the sum required for a vein claim and 25 feet on each side thereof, and on payment of the required sum for the placer claim, a patent will issue covering both placer and lode claims.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 696.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, p. 382.

Noyes v. Mantle, 127 U. S. 348, p. 352.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 100.

Largey, In re, 17 C. L. O. 3.

In an application for a placer claim it is a sufficient compliance with the statute to state in general terms the fact that a vein or lode is known to exist within the boundaries of such placer claim.

Sullivan v. Iron Silver Min. Co., 109 U. S. 550, p. 554.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 696.

By this statute Congress intended that an applicant for a placer patent with a vein or lode included within its boundaries should state that fact and upon payment of the required sum receive a patent for both.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, p. 382.

An applicant for a patent for a placer location can not be allowed to amend his application so as to include a lode or vein discovered by a third person after such placer location prior to the application for a patent and not included therein.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 102.

An applicant for a patent for a placer claim embracing one or more lode claims owned by other parties must have a survey of such placer claim and of each lode or vein within its exterior boundaries owned or claimed by other persons, and he must show that such placer claim embraces no other vein or lode except those shown on the plat of survey.

Morse, In re, 5 C. L. O. 5.

It is not within the contemplation of the mining laws that an application for a placer patent which has failed and is subsequently renewed is to be treated as continuously of effect from the date on which it was originally filed, and as fixing that date as the one relative to which the question of the known existence of lodes within the placer limits is to be determined.

Jaw Bone Lode v. Damon Placer, 34 L. D. 72, p. 76.

2. APPLICATION SUPPORTED BY AFFIDAVIT.

Under the departmental regulations (1889) an applicant for a placer patent is required to make affidavit, corroborated by one or more witnesses, that there is no known lode or vein within the boundaries of his placer claim, and if such affidavit is false

then the patent issued for the placer may be vacated or annulled by action in the proper court.

Pike's Peak Lode, In re, 10 L. D. 200, p. 203.

Largey, In re, 17 C. L. O. 3, p. 4.

The fact that lodes or veins are known to exist within the limits of a placer claim constitute no bar to the issuance of a patent for such placer, if they were not known to exist at the time of filing the application, and it is sufficient if the applicant states this fact under oath.

Sears, In re, 8 C. L. O. 152.

3. FAILURE TO INCLUDE KNOWN VEINS OR LODES—WAIVER.

This section applies only to veins or lodes not taken up or located so as to be the property of others, and if any claim or lode is not thus owned and is known to exist the applicant waives all right thereto unless it is claimed in his application.

Sullivan v. Iron Silver Min. Co., 109 U. S. 550, p. 552.

Noyes v. Mantle, 127 U. S. 348, p. 353.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431, p. 434.

Migeon v. Montana, etc., R. Co., 77 Fed. 249, p. 257.

Casey v. Thieviege, 19 Mont. 341, p. 346.

As there is no necessary connection between the placer and the vein or lode this section provides that an applicant for a placer patent must include any vein or lode of which he is in possession, and if he does not he waives the right thereto, if it is known to exist.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 228.

Migeon v. Montana, etc., R. Co., 77 Fed. 249, p. 255.

If a lode claim is known to exist at the date of an application for a placer claim and is not included therein, the lode claim does not pass to the placer patentee but the title to it remains in the Government.

South Star Lode, In re, 20 L. D. 204, p. 210.

Where a lode mining claim is known to exist a placer applicant must also apply for patent for such lode mining claim, but he acquires no title to the lode claim by virtue of his placer patent; and if he fails to apply for such known lode claim, he is conclusively presumed to have no right to or interest in it.

Mantle v. Noyes, 5 Mont. 274, pp. 288, 289.

This section applies to lodes or veins not taken up and located so as to become the property of others, and if they are not thus owned and are known to exist the applicant for the placer patent must include them or forfeit his right.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431, p. 434.

The applicant for a placer claim takes the surface land and the placer mine, and such lodes or veins of mineral matter within it as are unknown, but to such as were known to exist he obtains no right whatever by the patent unless expressly and specifically asked for.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 698.

Largey, In re, 17 C. L. O. 3.

Mineral deposits do not pass under a patent for placer lands subject to sale where such mineral deposits are known to exist.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326.

Van Ness v. Rooney, 160 Cal. 131, p. 140.

Loney v. Scott, 57 Oreg. 378.

Known veins are, by this section, exempted from patent applications on placers, but unknown veins are not, and the purpose of the section was to prevent title to known veins from being obtained by placer patents, and to protect a placer patentee

in his title to all mineral and deposits within his boundaries not known to exist at the time of application for patent.

McConaghy v. Doyle, 32 Colo. 92, p. 96.

4. VEIN OR LODGE NOT KNOWN—EFFECT.

Where the existence of a vein or lode in a placer claim is not known at the time of application for a patent, title will be acquired under such patent to all veins or lodes within the placer boundaries.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 696.

Noyes v. Mantle, 127 U. S. 348, p. 352.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 100.

Largey, In re, 17 C. L. O. 3.

See *Pike's Peak Lode*, In re, 14 L. D. 47.

If the vein or lode is not known at the time of the application for a placer patent such patent will convey all valuable mineral and other deposits thereafter found within the boundaries of the claim.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 680.

Migeon v. Montana, etc., R. Co., 77 Fed. 249, p. 257.

A placer claimant is entitled to any vein or lode existing within the boundaries of his claim and not known to exist at the time of his application for placer patent.

Raunheim v. Dahl, 6 Mont. 167, p. 168.

5. EXISTENCE OF VEIN OR LODGE A QUESTION OF FACT.

Whether a lode or vein exists within the boundaries of a placer claim at the time of making application for a patent is a question of fact which the locator has a right to have tried as such.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, p. 293.

Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 259.

Brownfield v. Bier, 15 Mont. 403, p. 410.

Whether there is sufficient gold or silver in a vein to justify working, and to be properly a known vein or lode within the meaning of this section, is a question of fact.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 403.

McConaghy v. Doyle, 32 Colo. 92, p. 97.

A claim of possession by the locator of a placer location to the right of possession of all veins or lodes within the placer limits can not override the positive provision of the statute that the application itself shall conclusively determine the right of possession of such lode against the placer applicant, if the lode itself is not applied for.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 102.

6. CONCLUSIVENESS OF APPLICATION AS TO KNOWN VEIN.

An application for patent for a placer claim that does not include an application for a known vein or lode within the boundaries thereof will be construed as a conclusive declaration that the applicant has no right of possession to such vein or lode.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 696.

Noyes v. Mantle, 127 U. S. 348, p. 352.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 681.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 402.

Iron Silver Min. Co. v. Sullivan, 16 Fed. 830.

Migeon v. Montana, etc., R. Co., 77 Fed. 249, p. 256.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 100.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 625.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, p. 678.

Sanderson, In re, 7 C. L. O. 100.

If an applicant for a placer patent is not in possession of a lode or vein within his boundaries, but such a vein is known to exist, then the application is construed as a conclusive declaration that the claimant has no right to the possession of such vein or lode.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 696.
 Pike's Peak Lode, In re, 10 L. D. 200, p. 202.
 South Star Lode, In re, 17 L. D. 280, p. 281.
 Sanderson, In re, 7 C. L. O. 100.
 Casey v. Thieviege, 19 Mont. 341, p. 346.
 McCarthy v. Speed, 11 S. Dak. 362, p. 368.
 See Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

H. APPLICATION FOR LODGE AFTER PLACER PATENT.

1. OWNER OF KNOWN LODGE MAY APPLY.
2. PROOF OF LODGE CLAIM WITHIN PLACER LIMITS.
3. KNOWN LODGES RESERVED FROM PLACER PATENT.
4. KNOWN LODGES LOCATED AFTER PLACER PATENT.
5. APPLICATION SUSPENDED OR REJECTED.

1. OWNER OF KNOWN LODGE MAY APPLY.

The claimant of a known lode must apply for a patent in the regular way, notwithstanding it exists in a prior patent for a placer claim including it, and the patentee of such placer claim may file the usual adverse claim.

Robinson v. Roydor, 1 L. D. 564.
 Olathe Placer Mine, In re, 4 L. D. 494.
 See Becker v. Sears, 1 L. D. 575.
 Shonbar Lode, In re, 3 L. D. 388.
 Discovery Placer Claim v. Murry, 25 L. D. 460.
 Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622.

An application may be made for patent for any lode or vein known to exist at the date of the patent to a placer claim, as if no patent had been issued for such placer claim, and patent to such lode claim may issue upon regular proceedings being had and proper proof furnished.

Sanderson, In re, 7 C. L. O. 100, p. 101.

The specific declarations required by this statute must be furnished as to each vein or lode intended to be claimed within the boundaries of a placer claim.

Circular, In re, 1 L. D. 685, p. 686.

But one lode or vein can be embraced in an application for patent, except in cases where placer claims embrace within their exterior boundaries several lode claims.

Lake Quicksilver Min. Co., In re, 2 C. L. O. 130.

2. PROOF OF LODGE CLAIM WITHIN PLACER LIMITS.

To sustain a lode claim upon a placer location the proof must show that the vein or lode claim is a valuable lode deposit and was known to exist at the date of the application for the placer patent.

Largey v. Black, 10 L. D. 156, p. 157.
 McConaghy v. Doyle, 32 Colo. 92, p. 97.

Before application for patent for a lode claim can be received, the applicant must affirmatively show the actual existence of the lode and mine, and its true location within the limits of the placer claim, and that its existence was known prior to the date of the placer application; and must state facts showing how the existence of such lode

at that time became known, and a statement under oath of mere conclusions is not sufficient to establish the existence of such lode.

Searl v. Finn, 10 C. L. O. 119, p. 120.

Moyer v. Mike & Starr, etc., Min. Co., 10 C. L. O. 150, p. 151.

The judgment of a court of competent jurisdiction rendered in proceedings brought by an adverse claimant does not determine or settle the question as to whether there was a known lode within the limits of a placer claim, but this question is left entirely open for departmental adjudication.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 103.

3. KNOWN LODES RESERVED FROM PLACER PATENT.

When it has been ascertained by inquiry instituted by the department or determined by a court of competent jurisdiction that a lode claim exists within the boundaries of the land covered by a placer patent and such lode claim was known to exist at the date of the application for such patent and was not applied for, the land embraced in such lode is reserved from the operation of the conveyance by the terms thereof and patent may issue for such lode on compliance with the statutory requirements.

South Star Lode, In re, 20 L. D. 204, p. 210.

Overruling Pikes Peak Lode, In re, 14 L. D. 47.

Valley Lode, In re, 22 L. D. 317.

Valley Lode, In re (on review), 22 L. D. 713.

See Pacific Slope Lode v. Butte Townsite, 25 L. D. 518, pp. 520, 521.

Gregory Lode Claim, In re, 26 L. D. 144.

Alice Min. Claim, In re, 27 L. D. 661, p. 662.

Brady v. Harris, 29 L. D. 426, p. 433.

4. KNOWN LODES LOCATED AFTER PLACER PATENT.

A vein known to exist within the boundaries of a placer claim at the date of application for patent, and not included in the application, may be located by an adverse claimant after the issuance of the patent.

Mutchmor v. McCarty, 149 Cal. 603, p. 610.

A third person has no right to enter upon a valid placer claim for the purpose of prospecting or searching for veins or lodes, and any such entry is a trespass which can not be relied upon to sustain a claim of right to any vein or lode.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, pp. 229, 231.

5. APPLICATION SUSPENDED OR REJECTED.

Where an applicant for a patent for a lode claim within a placer location shows by ex parte affidavits that such lode claim was known to exist prior to the issuance of the patent for the placer claim, the application may be suspended and a hearing had with a view to the proper proceedings to set aside the placer patent as to its conflict with the lode application.

Rebel Lode, In re, 12 L. D. 683, p. 684.

Where the record shows that there was no known lode or vein within the boundaries of a placer claim, and the patent has regularly issued, then no subsequent application for a lode claim should be received by local officers while the placer patent remains outstanding and uncanceled.

Pikes Peak Lode, In re, 10 L. D. 200, p. 203.

Rebel Lode, In re, 12 L. D. 683, p. 684.

South Star Lode, In re, 17 L. D. 280.

Largey, In re, 17 C. L. O. 3, p. 4.

I. APPLICATION FOR PLACER AND LODE.

This section provides that when one applies for a placer patent who is at the time in the possession of a vein or lode included within its boundaries, he must state such fact, and on payment of the sum required for a vein or lode and 25 feet on each side of it, and on payment of the sum required for the placer claim a patent will issue to him covering both the placer claim and the lode.

Dahl v. Raunheim, 132 U. S. 260, p. 261.

Sullivan v. Iron Silver Min. Co., 109 U. S. 550, p. 552.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 694.

Noyes v. Mantle, 127 U. S. 348, p. 352.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 225.

Iron Silver Min. Co. v. Sullivan, 16 Fed. 830.

This section directs what application shall be made for a placer claim which includes within its boundaries a known lode or vein in the possession of the applicant, and there is no rule of construction under which it can be said that a statute, directing how an application shall be made for a placer claim which includes a known vein or lode, prohibits the inclusion in an application for patent of a placer claim and a lode claim covering adjoining but different tracts of ground.

Mayflower Gold Min. Co., In re, 29 L. D. 7, p. 8.

An applicant for a placer patent who is in possession of a vein or lode within his placer claim must state the fact, and upon payment of the sum required patent may issue covering the placer claim, together with the lode claim and 25 feet of surface on each side thereof.

Pikes Peak Lode, In re, 10 L. D. 200, p. 202.

See Reynolds v. Iron Silver Min. Co., 116 U. S. 687.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

J. WIDTH OF LODE CLAIM WITHIN PLACER LIMITS.

A lode claim within a placer claim may be allowed for 1,500 feet in length and 50 feet in width, or 25 feet on each side of the vein.

South Star Lode, In re, 20 L. D. 204.

See Shonbar Lode, In re, 1 L. D. 551.

Shonbar Lode, In re, 3 L. D. 388.

North Star Lode, In re, 28 L. D. 41.

A lode claim located within the limits of a placer claim and known to exist at the date of, but not included in, the placer application is limited to 25 feet on each side of the center of the vein.

Daphne Lode Min. Claim, In re, 32 L. D. 513, p. 517.

The locator of a lode or vein within the boundaries of a placer claim is entitled to no more than the vein or lode and fifty feet of ground, 25 feet on each side of such vein, extending 1,500 feet in length, and this rule applies whether located and patented by the placer claimant as well as by third persons.

Mount Rosa Min., etc., Co. v. Palmer, 26 Colo. 56, p. 63.

See Reynolds v. Iron Silver Min. Co., 116 U. S. 687.

Campbell v. Iron Silver Min. Co., 56 Fed. 133.

The width of surface ground which must be embraced by the survey of a lode claim within a placer location is regulated by local law.

Morse, In re, 5 C. L. O. 5.

The limitation of the width of a lode claim within the boundaries of a placer claim applies only where the same claimant seeks a patent for a vein or lode included within the boundaries of his placer claim, and it has no application to a lode claim perfected by another prior to the date of the application for patent for a placer claim whose bound-

aries include the lode claim; and when it is made to appear that there is a lode claim within the boundaries of such placer claim, not owned by the applicant for such placer claim, then the lode claim to its full extent is excepted from the placer patent.

Pikes Peak Lode, In re, 10 L. D. 200, p. 203.

Elda Min., etc., Co. v. Mayflower Gold Min. Co., 26 L. D. 573.

Cape May Min., etc., Co. v. Wallace 27 L. D. 676, p. 679.

Largey, In re, 17 C. L. O. 3, p. 4.

Mount Rosa Min., etc., Co. v. Palmer, 26 Colo. 56, p. 63.

K. ADVERSE PROCEEDINGS—PLACER AND LODGE CLAIMANTS.

1. DUTY TO ADVERSE.
2. PERSONS NOT REQUIRED TO ADVERSE.
3. ADVERSE CLAIM—PLEADING.

1. DUTY TO ADVERSE.

A lode claimant whose claim is within the limits of a placer location must file an adverse claim to the placer application within the statutory period in order to protect his location, and failing to do so he is only entitled to 25 feet of surface on each side of the lode.

Shonbar Lode, In re, 1 L. D. 551.

The rights of a lode claimant within the boundaries of a placer claim are dependent upon the known existence of the vein or lode within the boundaries of the placer claim at the time of the application for the placer patent, and if known and not excluded by the applicant for the placer patent, the lode claimant may, by proper adverse proceedings, have a judgment in his favor for the conflicting areas.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, p. 679.

While the exception of a known vein or lode not applied for by a placer claimant does not depend upon the filing or prosecution of an adverse claim, yet the fact remains that this course presents the most effectual means of obtaining a final and satisfactory determination and adjustment of the rights of the conflicting claimants.

Cripple Creek Gold Min. Co. v. Mount Rosa Min., etc., Co., 26 L. D. 622, p. 627.

An adverse claimant who has submitted his claim to adjudication by the proper court can not at the same time assert before the Land Department his claim of right under the general exceptions and reservations created by this section.

Jaw Bone Lode v. Damon Placer, 34 L. D. 72, p. 75.

2. PERSONS NOT REQUIRED TO ADVERSE.

The patentee of a placer mining claim is under no legal obligation to adverse the application for a patent for a lode claim within the boundaries of such placer claim, as in such case the lode claimant has the burden of proof to show that it was a vein or lode within the placer which was known to exist at the time of the application for a patent.

Discovery Placer Claim v. Murry, 25 L. D. 460, p. 463.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 623.

See Robinson v. Roydor, 1 L. D. 564.

Olathe Placer Mine, In re, 4 L. D. 494.

The fact that a prior locator of a lode claim within the boundaries of a placer claim fails to adverse the application for a patent for such placer claim does not affect his rights and does not prevent the subsequent issuance of a patent for his lode claim on proof of compliance with the mining laws.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, p. 680.

A claimant to a previously located lode within the limits of a placer patent who failed to adverse such placer application is restricted to 25 feet of surface on each side thereof.

Pikes Peak Lode, In re, 14 L. D. 47.

See Shonbar Lode, In re, 1 L. D. 551.

Shonbar Lode, In re, 3 L. D. 388.

When the applicant for a placer claim has complied with the requirements of the statutes he is entitled to a patent upon the payment of \$2.50 an acre, and it is assumed that no adverse claim exists, and thereafter no objection from third persons to the issuance of a patent can be heard except it be shown that the applicant has failed to comply with the statute.

Piru Oil Co., In re, 16 L. D. 117, p. 120.

3. ADVERSE CLAIM—PLEADING.

In a contest as to the ownership of a placer mining claim it is not necessary as a matter of pleading, to state the date of the application for a patent, as the patent, when obtained, relates to this date, and if a lode were then known to exist it would be excluded from the grant by the patent, but otherwise it would pass with the placer patent, and it is only necessary to allege that the application was made prior to the location of the vein or lode.

O'Keefe v. Cannon, 52 Fed. 898, p. 899.

A judicial award of the right of possession to an adverse placer claimant as against a lode applicant does not preclude subsequent departmental inquiry upon the allegation of the lode claimant that the placer claim embraced known lodes, if this question was not in issue before the court.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95.

Clipper Min. Co. v. Ely Min., etc., Co., 29 Colo. 377, p. 383.

See Mount Rosa Min., etc., Co. v. Palmer, 26 Colo. 56.

L. PATENT FOR PLACER CLAIM.

1. EXTENT AND ACREAGE.
2. KNOWN LODS NOT ACQUIRED BY PLACER PATENT.
3. UNKNOWN LODS INCLUDED IN PLACER PATENT.
4. PATENT FOR LODE CLAIM WITHIN PLACER LIMITS—EFFECT.
5. EXCEPTIONS AS TO VEIN OR LODE—EXTENT.
6. PATENTS FOR PLACER AND LODE CLAIMS—RIGHTS OF PATENTEES.
7. PRESUMPTIONS AND CONCLUSIVENESS.
8. VACATION OF PATENT BECAUSE OF KNOWN LODS.
9. SUBSEQUENT DISCOVERY OF VEIN OR LODE—EFFECT.

1. EXTENT AND ACREAGE.

See sec. 2329, p. 507.

A patent for a placer mining claim composed of distinct mining locations, some of which were made after 1870 and which together embraced over 160 acres, is valid.

Tucker v. Masser, 113 U. S. 203, p. 204.

See Smelting Co. v. Kemp, 104 U. S. 636.

The validity of a patent as to the extent of a placer claim depends upon the existence or nonexistence of a known lode or vein within the placer claim prior to entry and issuance of a placer patent.

Pikes Peak Lode, In re, 10 L. D. 200, p. 204.

2. KNOWN LODES NOT ACQUIRED BY PLACER PATENT.

If a vein or lode is claimed or known to exist within the described premises at the date of the patent then the same is expressly excluded from such patent.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 697.

Montana Co. v. Clark, 42 Fed. 626, p. 630.

Railroad Lode v. Noyes Placer, 9 L. D. 26, p. 29.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 333.

See Largey, In re, 17 C. L. O. 3.

Loney v. Scott, 57 Oreg. 378, p. 383.

This section carves out from a patent to a placer claim all known lodes found therein at the date of application, together with 25 feet of the surface ground on each side of the lode, and where a known lode was not claimed by the placer applicant and is excluded from his final survey, it forms no part of his placer claim and the residue may properly be patented to him.

War Dance v. Church Placer, 1 L. D. 549, p. 550.

Robinson v. Roydor, 1 L. D. 564.

Becker v. Sears, 1 L. D. 577.

Iron Silver Min Co. v. Mike & Starr, etc., Min. Co., 6 L. D. 533.

Shonbar Lode, In re, 1 L. D. 551.

Searl v. Finn, 10 C. L. O. 119, p. 120.

Moyer v. Mike & Starr, etc., Min. Co., 10 C. L. O. 150.

Largey, In re, 17 C. L. O. 3.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 252.

See Becker v. Sears, 1 L. D. 575.

The patentee of a placer claim is not entitled to possession of a vein or lode within its boundaries if he knew of its existence at the time of applying for the patent and did not include such vein or lode in his application.

Sullivan v. Iron Silver Min. Co., 109 U. S. 550, p. 553.

Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, pp. 381, 382.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431, p. 438.

When it is shown that the patentee of the placer claim knew that a certain vein or lode existed at the time he acquired title to the placer, this is sufficient proof that he acquired no title or interest in such vein by his patent.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 698.

Noyes v. Clifford, 37 Mont. 138, p. 142.

See Largey, In re, 17 C. L. O. 3.

The question as to whether lodes or veins of mineral bearing quartz pass under a placer patent is to be determined by the fact of the known or unknown existence of such veins or lodes at the date of application for patent by placer claimant, and not at the date of the location of his claim.

Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95, p. 101.

See South Star Lode, In re, 20 L. D. 204.

A formal location of a lode claim is not necessary to exclude it from a patent for a placer claim, the only requisite being that it be known to exist and that it be not included in the application for the placer.

Railroad Lode v. Noyes Placer, 9 L. D. 26, p. 29.

Alta Mill Site, In re, 8 L. D. 195.

The validity of a patent for a placer claim and its extent depends upon the existence or nonexistence of a known lode or vein within such placer claim prior to entry and issuance of the patent.

Largey, In re, 17 C. L. O. 3, p. 4.

A patent for a placer claim issued upon a false affidavit as to the nonexistence of a lode or vein within the placer limits may be vacated or annulled by appropriate action in the proper court.

Largey, In re, 17 C. L. O. 3, p. 4.

A patent issued to a placer proprietor carries with it the title to all the surface of the ground described therein, unless it may be found that within the land embraced in the patent a lode exists which, contrary to the proof made by the placer claimant, was known to exist and to be capable of being profitably worked at the date the entry was made.

Juniata Lode, In re, 13 L. D. 715, p. 716.

3. UNKNOWN LODES INCLUDED IN PLACER PATENT.

Under this section it is a lode or vein in a placer claim, the existence of which is not known, that a placer patent carries with it; but there is no provision in the statute authorizing a placer claimant to acquire title to a lode mining claim by virtue of his placer patent.

Mantle v. Noyes, 5 Mont. 274, pp. 288, 289.

A patent for a placer claim is restricted to any lodes or veins which are not known to exist or claimed at the date of the patent.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 697.

Largey, In re, 17 C. L. O. 3.

Loney v. Scott, 57 Oreg. 378, p. 383.

A patent for a placer claim conveys all valuable mineral and other deposits within its boundaries if the existence of such mineral or of a vein or lode is not known at the time.

Iron Silver Min. Co. v. Sullivan, 16 Fed. 830.

War Dance v. Church Placer, 1 L. D. 549, p. 550.

Pikes Peak Lode, In re, 10 L. D. 200, p. 202.

Maggie Lode, In re, 14 L. D. 654, p. 655.

Woods v. Holden, 26 L. D. 193, p. 205.

Alice Min. Co., In re, 27 L. D. 661, p. 662.

Sanderson, In re, 7 C. L. O. 100, p. 101.

See Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.

When it is ascertained that a lode, alleged to have been known to exist within the placer boundaries at the date of the application for patent to the placer claim, was not known so to exist, the title of the United States to such lode passed under the patent, and the jurisdiction of the Land Department thereby terminated.

Alice Min. Co., In re, 27 L. D. 661, p. 663.

4. PATENT FOR LODE CLAIM WITHIN PLACER LIMITS—EFFECT.

The fact that a patent is issued for a lode claim within the boundaries of an existing placer claim is not of itself conclusive evidence that such lode or vein was known to exist at the time the application was made for a patent for such placer claim.

Iron Silver Min. Co. v. Campbell, 135 U. S. 286, pp. 290, 291.

The issuance of a lode patent to a locator covering his rights to known lodes or veins where these exist at the date of a placer application, will not be prevented or hindered by the issuance of a placer patent.

South Star Lode, 20 L. D. 204.

Elda Min., etc., Co. v. Mayflower Gold Min. Co., 26 L. D. 573, p. 574.

The rights of a lode claimant are not affected by the issuance of a patent for a placer claim where the general territory of such placer claim includes the lode, but his rights will be preserved and protected as fully as if determined and specifically excepted from the operation of such patent.

Elda Min., etc., Co. v. Mayflower Gold Min. Co., 26 L. D. 573, p. 574.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 876, p. 679.

North Star Lode, In re, 28 L. D. 41, p. 43.

See Rico Town Site, In re, 9 C. L. O. 90.

A quartz claim upon a patented placer claim depends for its ultimate validity and value upon the ability of the locator to prove that at the time application for the placer patent was made the placer claim contained such known vein or lode.

Kift v. Mason, 42 Mont. 232, p. 237.
See *Noyes v. Clifford*, 37 Mont. 138.

5. EXCEPTIONS AS TO VEIN OR LODGE—EXTENT.

The statute excepts only such veins and lodes as are known to exist at the time the application is made for the patent and not at the date of the patent.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 680.

A patent can not make exceptions with reference to a vein or lode broader than the statute itself.

United States v. Iron Silver Min. Co., 128 U. S. 673, p. 680.

Lodes or veins known to exist within a placer claim at the date of the application for the placer patent and not applied for are by operation of law excepted from the placer patent and so inserted in the patent.

Pikes Peak Lode, In re, 10 L. D. 200, p. 203.

South Star Lode, In re, 20 L. D. 204.

Elda Min., etc., Co. v. Mayflower Gold Min. Co., 26 L. D. 573, p. 574.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 623.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, p. 679.

Largey, In re, 17 C. L. O. 3, p. 4.

Casey v. Thieviege, 19 Mont. 341, p. 346.

Washoe Copper Co. v. Junila, 43 Mont. 178, p. 187.

By a patent to a placer claimant the Government conveys the tract therein described but excepts any vein or lode known to exist within the described premises.

Pikes Peak Lode, In re, 14 L. D. 47, p. 49.

The rights of a lode claimant within the boundaries of a placer claim are not affected by the issuance of a patent to the placer claimant, but are protected as fully as if specifically excepted from the operation of the patent, and patent may be subsequently issued to the lode claimant.

Elda Min., etc., Co. v. Mayflower Gold Min. Co., 26 L. D. 573.

Cape May Min., etc., Co. v. Wallace, 27 L. D. 676, p. 679.

Where it appears from the record that there is a lode claim within the boundaries of a placer claim, not owned by the applicant for such placer claim, then the patent for such placer claim should except the lode claim in its full extent.

Largey, In re, 17 C. L. O. 3, p. 4.

See *Pikes Peak Lode*, In re, 14 L. D. 47.

If known veins or lodes are expressly excepted from patents for placer claims within their boundaries, it is also true that under the preemption, homestead, or town-site laws no title from the United States to land known at the time of sale to be valuable for minerals can be obtained.

Pikes Peak Lode, In re, 10 L. D. 200, p. 204.

Laney, In re, 9 L. D. 83.

The veins and lodes excepted by this section are veins and lodes valuable for their mineral deposits and known to be such at the date of the placer application.

Wilson Creek Consol. Min., etc., Co. v. Montgomery, 23 L. D. 476, p. 477.

See *Deffeback v. Hawke*, 115 U. S. 392, p. 404.

Davis v. Weibold, 139 U. S. 507, p. 524.

A vein or lode existing within the limits of a placer claim is reserved from the operation of the placer patent by this section, and the lode patent may issue therefor upon due proof or of compliance with the statute.

Butte & Boston Min. Co., In re, 21 L. D. 125, p. 126.

See *South Star Lode*, In re, 20 L. D. 204.

A patent for a placer claim made on an application stating that no known lode existed within the boundaries of such placer location and containing a reservation that should any vein or lode bearing gold, silver, etc., be claimed or known to exist "within the above described premises at the date hereof the same is expressly excepted and excluded from these presents," does not convey title to a lode claim known to exist at the date of such application and such lode claim does not pass by virtue of the patent, and a subsequent patent may issue for such lode claim on compliance with the statutory requirements.

South Star Lode (on review), 20 L. D. 204.
See Winter Lode, In re, 22 L. D. 362.

6. PATENTS FOR PLACER AND LODE CLAIMS—RIGHTS OF PATENTEES.

Two classes of mining claims are recognized by the mining laws, a placer and a lode claim, and separate patents may issue for such claims, one conveying the placer and the other the lode claim, and to different persons, but both may pass under a placer patent; and this is done where the lode claim is not known at the date of the application, or where it is known and the placer patentee includes it in his application for patent.

South Star Lode, In re, 20 L. D. 204, p. 210.

The issuance of a patent for a placer claim does not prevent the department from issuing a patent for a lode claim within the exterior boundaries of the placer patented claim if the lode claim was known to exist at the date of the application for such placer patent.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 6 L. D. 533.
See Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394.

A patent for a placer mining claim can not include a vein or lode known to exist within its limits at the date of the application.

Noyes v. Clifford, 37 Mont. 138, p. 142.

Known lodes within the limits of a placer location are not the subject of a placer grant, and such a grant does not operate to confer title or possession thereof upon the placer claimant, or withdraw them from subsequent location by others; and such placer location gives a qualified possession of the ground located, and the known lodes or veins within the placer limits can be acquired only by locating them as lode claims.

Mount Rosa Min., etc., Co., v. Palmer, 26 Colo. 56, p. 59.

See Reynolds v. Iron Silver Min. Co., 116 U. S., 687.

See Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L. D. 95.

A placer patent conveys title to all minerals in the ground described except lodes or veins known to exist at the date of location.

Mutchmor v. McCarty, 149 Cal. 603, p. 610.

The title to a lode or vein known to exist within a placer claim but not stated as known remains in the United States, and the patentee has no such interest in it as authorizes him to disturb anyone else in the peaceable possession and mining of such vein.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 698.

Montana Co. v. Clark, 42 Fed. 626, p. 630.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 938.

Washoe Copper Co. v. Junila, 43 Mont. 178, p. 182.

See Noyes v. Clifford, 37 Mont. 138.

A patent for a placer claim will not convey the title to a known vein or lode within its boundaries unless such vein or lode is specifically applied and paid for.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 229.

Where a lode or vein is claimed by another than the placer applicant the case then falls within the provisions of the latter clause of the section, which does not prescribe in terms the superficial area which shall be reserved together with such lode or claim from a grant of placer ground, as does the first clause of the section.

Daphne Lode Min. Claim, In re, 32 L. D. 513, p. 516.

The patentee of a placer claim containing a known lode or vein does not forfeit his entire claim, but only the part wrongfully patented to him, and it is a usual practice to require him to surrender the whole of his patent in order to have all of it patented back to him except the small strip which the proof shows does not belong to him.

Juniata Lode, In re, 13 L. D. 715, p. 717.

See Winter Lode, In re, 22 L. D. 362.

Eureka & Excelsior Consol. Gold Min. Co., In re, 24 L. D. 512, p. 513.

This section provides for patent for placer claim that includes a known vein or lode, and on failure to apply for a patent for such known vein or lode the placer patentee acquires no right whatever to such vein or lode.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 251.

7. PRESUMPTIONS AND CONCLUSIVENESS.

All presumptions favor the validity of a placer patent, and that the patentee had fully complied with the law, and that at the time of his application there was no known vein in such claim.

Montana, etc., R. Co. v. Migeon, 68 Fed. 811, p. 813.

A patent issued to a placer claim conclusively established the fact that the ground was placer and its effect can not be avoided.

Dahl v. Raunheim, 132 U. S. 260, p. 261.

Butte & Boston Min. Co. v. Sloan, 16 Mont. 97, p. 103.

An action to quiet title is allowed where the application for patent is not resisted, as in case of the location of a lode claim within a placer claim, and where the lode claim was not known to exist at the time of the application for patent.

Dahl v. Raunheim, 132 U. S. 260, p. 261.

See Iba v. Central Assn., 5 Wyo. 355, p. 366.

8. VACATION OF PATENT BECAUSE OF KNOWN LODES.

Upon proof showing that mines were known at the time an entry was made and a patent issued either to a townsite lot or to a placer claim, the department will recommend a suit in the proper court to set aside the patent or such part thereof as conflicts with such mine.

Juniata Lode, In re, 13 L. D. 715, p. 716.

See Pike's Peak Lode, In re, 10 L. D. 200.

Plymouth Lode, In re, 12 L. D. 513.

Pacific Slope Lode, In re, 12 L. D. 686.

Cameron Lode, In re, 13 L. D. 369.

The courts will vacate that part of a placer claim or patent in conflict with an existing lode and disposes the placer proprietor; and to save the trouble and expense of litigation the placer claimant may convey by deed directly to the lode claimant the ground in controversy.

Juniata Lode, In re, 13 L. D. 715, p. 716.

A finding by the department to the effect that a lode claim does not pass to a placer patentee is only prima facie evidence of that fact, and the question may be inquired into by a court after patent has issued to a lode claimant.

South Star Lode, In re, 20 L. D. 204, p. 208.

See Iron Silver Min. Co. v. Campbell, 135 U. S. 286.

Where a lode claim was located prior to the date of an application for a placer patent and the placer application antedated the lode application which proceeded without adverse on behalf of the lode claim and various adverse claims were filed against the placer application by claimants of other lodes, during the pendency of which patent to the full width applied for was by inadvertence and mistake as to its conflict with the placer issued for a lode claim and the application for lode patent was allowed and the patent by inadvertence issued for the full width of the claim throughout, in the absence of a determination that the lode was known to exist at the date of the application for the placer patent, the jurisdiction which was thereby lost to determine that and other questions might be restored to the Land Department, and a suit may be maintained to cancel the patent so issued by inadvertence and mistake.

Daphne Lode Claim, In re, 32 L. D. 513, p. 517.

See Elda Mining & Milling Co. v. Mayflower Gold Mining Co., 26 L. D. 573.

Cape May Mining, etc., Co. v. Wallace, 27 L. D. 676, p. 679.

North Star Lode, In re, 28 L. D. 41, p. 44.

9. SUBSEQUENT DISCOVERY OF VEIN OR LODGE—EFFECT.

Where lodes or veins in quartz or other rock in place bearing gold or silver or other metal were not disclosed at the time of application for a patent for a placer claim, a subsequent discovery of lodes upon the ground and their successful working does not affect the good faith of the applicant, as that is to be determined by what was known to exist at the time of making application.

United States v. Iron Silver Min. Co., 128 U. S. 673, pp. 684, 685.

See Sullivan v. Iron Silver Min. Co., 143 U. S. 431, p. 434.

Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 623.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 16.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394, p. 401.

The title to all veins and lodes within the boundaries of a placer claim passes to the placer patentee and any subsequent discovery inures to his benefit.

Clipper Min. Co. v. Eli Min., etc., Co., 194 U. S. 220, p. 231.

SECTION 2334, REVISED STATUTES.

The surveyor general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than 160 acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

Same as the first half of section 12, act of May 10, 1872 (17 Stat. 91, p. 95), p. 681.

A. MINERAL SURVEYORS—SURVEY OF MINING CLAIMS.

1. APPOINTMENT OF DEPUTY SURVEYORS.
2. AUTHORITY OF SURVEYOR GENERAL.
3. QUALIFICATIONS OF MINERAL SURVEYORS.
4. SURVEY OF MINING CLAIM—RIGHT OF CLAIMANT.
5. MINERAL CLAIMANT MAY CONTRACT WITH ANY SURVEYOR.
6. EXPENSE OF SURVEY—PAYMENT BY CLAIMANT.
7. DEPOSIT FOR EXPENSE OF SURVEY.
8. RESURVEY OF MINING CLAIM—COMPENSATION.
9. MINERAL SURVEYORS NOT TO BE INTERESTED IN CLAIMS SURVEYED.
10. REPORT OF SURVEYOR—EVIDENCE OF MINERAL CHARACTER OF LAND.

1. APPOINTMENT OF DEPUTY SURVEYORS.

Deputy mineral surveyors are appointed without limitations for no particular time, are not required to keep an office, do not remain under the direction or supervision of the surveyor general, and are not obliged to perform any service either for the Government or any individual, but are simply persons designated as having the requisite qualifications to make a proper survey of mining claims, and their work is done under special contract with the mineral claimant.

Hand v. Cook, 29 Nev. 518, p. 541.

2. AUTHORITY OF SURVEYOR GENERAL.

The action of the surveyor general in suspending a deputy mineral surveyor is subject to the supervisory authority of the Commissioner of the General Land Office, with the right of appeal to the Secretary of the Interior.

Gorlinaki, In re, 20 L. D. 283, p. 284.

All official surveys of mining claims are made by a deputy mineral surveyor regularly appointed by the proper surveyor general, and he is therefore an officer of the Land Department, and his reports and acts must be accepted as *prima facie* true.

Gowdy v. Kismet Gold Min. Co., 24 L. D. 191, p. 193.

3. QUALIFICATIONS OF MINERAL SURVEYORS.

This section does not in express terms require that a deputy mineral surveyor shall be either a legal or actual resident of the district for which he is appointed.

Helmick, In re, 20 L. D. 163.

This section contemplates competency on the part of mineral surveyors and gives a reasonable assurance to the owners of mining claims who employ such surveyors, and when found to be incompetent they should be discharged by the appointing power, that future impositions may be avoided.

Golden Rule, etc., Co., In re, 37 L. D. 95, p. 99.

Under this section only competent surveyors should be appointed, and errors in the field notes of a deputy mineral surveyor can not be corrected by a register or receiver of the General Land Office.

Surveyor General, In re, Copp's Min. Lands 234.

4. SURVEY OF MINING CLAIM—RIGHT OF CLAIMANT.

The law points out the method by which applicants for patent may obtain a survey of a mining claim, and it is the duty of the Land Department to require the proper survey and plat and to require correction of any error apparent in the survey.

Argillite Ornamental Stone Co., In re, 29 L. D. 585, p. 586.

An applicant for survey under the mining law is entitled to a survey of the entire mining claim, as located, if held by him in accordance with local laws and the acts of Congress.

Russel Lode, In re, 5 C. L. O. 18.

The field work in a survey consists of the surveyors' notes of bearings, distances, etc., in the field, or a determination on the land, of its form, extent, position, etc., by means of certain measurements, and these constitute the survey for which an applicant for patent for a mining claim is authorized to contract with a deputy surveyor, and he is not required to make a deposit of the expenses of such survey.

Foote, In re, 2 L. D. 773.

A failure of a deputy surveyor to comply with regulations made by the surveyor general will not necessarily annul a survey of a mining claim unless it fails to conform to the law.

Wisconsin Min. Co. v. Cooper, 10 C. L. O. 69.

5. MINERAL CLAIMANT MAY CONTRACT WITH ANY SURVEYOR.

The mineral claimant, under this section, may employ any deputy mineral surveyor to do his field work and may contract on the basis of such compensation as may

be agreed upon, subject only to the limitation of a maximum charge which is fixed by the General Land Office.

Anderson, In re, 26 L. D. 575, p. 576.

Golden Rule, etc., Co., In re, 37 L. D. 95, p. 98.

This section permits an applicant for patent for a mining claim to contract with any United States surveyor for his services in making the survey upon any terms they can agree upon.

Foote, In re, 2 L. D. 773.

A mineral claimant has the option of employing any deputy surveyor to do his surveying and with whom he may contract to do the work.

Lock Lode, In re, 6 L. D. 105.

The mineral surveyor's real obligation, except as he is controlled by the supervisory authority of the surveyor general and subject to the limitation of fixed charges, is to the mineral claimant for whom the services are rendered; and the Land Department is without authority to impose upon a mineral claimant the condition that an amended survey shall be made without expense to the mineral surveyor.

Golden Rule, etc., Co., In re, 37 L. D. 95, p. 98.

While the mineral surveyors appointed under this section act only at the solicitation of the owners of mining claims and are paid by them, yet their charges must be within the rule fixed by, and their work done in conformity to, the regulations of the Land Office, and the work which they do is work of the Government.

Waskey v. Hammer, 223 U. S. 85.

6. EXPENSE OF SURVEY—PAYMENT BY CLAIMANT.

The expenses of the survey of a mining claim must be paid by the applicant.

Golden Empire Min. Co., In re, 36 L. D. 561, p. 563.

Orient, Occident & Other Mines, In re, 7 C. L. O. 82.

This section was intended to protect applicants for mining patents from unjust charges for surveys and publication, authorizing any applicant to contract personally with the deputy surveyor as to his services as to the survey.

Foote, In re, 2 L. D. 773.

A mineral claimant must defray all expenses of survey and publication of notice; yet the register under his discretionary power may determine which of two newspapers, published equally distant from the mining claim, may afford the widest publicity of the required notice, though one of the papers offers to publish such notices at a less rate than the one selected by the register.

Trippe, In re, 40 L. D. 190, pp. 191-193.

The publisher of a newspaper is not permitted to change figures to words or otherwise enlarge the publication for the purpose of increasing the cost of the publication, and thereby adding to the expenses required to be paid by the mineral claimant.

Steel, In re, 3 L. D. 115.

7. DEPOSIT FOR EXPENSE OF SURVEY.

Under this section and the regulations of the department surveyor generals can, under no circumstances, receive the amount estimated by them as necessary to cover the cost of a survey and expenses incident thereto, but must require a deposit by the applicant in a designated depository.

Dumphy, In re, 8 L. D. 102, p. 103.

It is within the discretion of the surveyor general to regulate the amount required to be deposited to cover the expenses of the office work required in correcting the survey of a mining claim.

Vanderbilt Lode, In re, 16 L. D. 105, p. 106.

Parties desiring an official survey made of a mining claim must make the required deposit for office work with the surveyor general, and until such deposit is made the surveyor general should not treat such survey as official.

Thor, Venus and Bright Point Mines, In re, 5 C. L. O. 51, p. 52.

A mineral applicant may be required to deposit the additional expense because of alleged errors in the work of the surveyor general and his deputies, though the applicant was in no way responsible for such expense, but time should be given in which he should make application for an amended survey and make the required deposit, and he should be notified that in the event of his failure so to do his entry would be canceled.

Vanderbilt Lode, In re, 16 L. D. 105, p. 106.

See Senator Mill Site, In re, 7 L. D. 475.

8. RESURVEY OF MINING CLAIM—COMPENSATION.

The Land Office reserves the right to order a new survey of a mining claim under the direction of the surveyor general where the description in the survey submitted is doubtful or unintelligible.

Foote, In re, 9 C. L. O. 113.

A deputy mineral surveyor can not be required to make a resurvey without compensation.

Anderson, In re, 26 L. D. 575, p. 576.

Golden Rule, etc., Co., In re, 37 L. D. 96, p. 97.

A mineral claimant should not bear the expense of a resurvey because of a fault or mistake in the description of the claim made by a deputy surveyor.

Hickey, In re, 9 C. L. O. 163.

9. MINERAL SURVEYORS NOT TO BE INTERESTED IN CLAIMS SURVEYED.

Mineral surveyors come within the statute prohibiting officers, clerks, and employees in the General Land Office from being interested in the purchase of any of the public lands and the location of a mining claim by a mineral surveyor is absolutely void, and such a location can not be considered valid against all but the Government.

Waskey v. Hammer, 223 U. S. 85, p. 92.

McMicken, In re, 10 L. D. 97.

McMicken, In re, 11 L. D. 96.

Muller v. Coleman, 18 L. D. 394.

Gowdy v. Kiamet Gold Min. Co., 24 L. D. 191.

Neill, In re, 24 L. D. 393.

Floyd v. Montgomery, 26 L. D. 122.

Maxwell, In re, 29 L. D. 76.

Baltzell, In re, 29 L. D. 333.

Bradford, In re, 36 L. D. 61.

Overruling Lock Lode, In re, 6 L. D. 105.

Leffingwell, In re, 30 L. D. 139.

Denison, In re, 11 C. L. O. 261.

Lavagnino v. Uhlig, 198 U. S. 443, p. 452.

Lavagnino v. Uhlig, 26 Utah 1.

The deputy mineral surveyors are the only representatives of the Government who have to do with the proceedings incident to applications for patent, and they alone come in contact with the land itself and have an opportunity to observe its situation.

and character, the extent and nature of the work done, and improvements made thereon; and as the certificate of the surveyor general required to be filed with applications for patent are based on the reports of the deputy surveyors, it is therefore regarded as a violation of the statute, as well as against public policy, to permit a deputy mineral surveyor to have any interest in the claim surveyed by him.

Waskey v. Hammer, 223 U. S. 85, p. 92.

Gowdy v. Kismet Gold Min. Co., 24 L. D. 191, p. 193.

A deputy United States mineral surveyor, appointed under the provisions of this section, is not, like officers, clerks, and employees of the General Land Office, under the holding of the supreme court of Nevada, disqualified from purchasing or becoming interested in the purchase of a mining claim, but the Supreme Court of the United States has more recently held that such deputy mineral surveyors are prohibited from purchasing.

Hand v. Cook, 29 Nev. 518, p. 531.

10. REPORT OF SURVEYOR—EVIDENCE OF MINERAL CHARACTER OF LAND.

The report of a deputy surveyor, made in an official capacity and pursuant to the order of the surveyor general, is of much greater weight in showing the true mineral character of land than the report of the field notes of the original survey, which are silent as to the mineral quality of the land in controversy.

Washington v. McBride, 18 L. D. 199, p. 202.

SECTION 2335, REVISED STATUTES.

All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least 10 days to the opposing party; or if such party can not be found, then by publication of at least once a week for 30 days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Same as section 13 of the act of May 10, 1872 (17 Stat. 91, p. 95), p. 682.

Section 14, act of July 9, 1870 (16 Stat. 217), p. 670, is the same as the first clause of this section.

A. CONSTRUCTION AND APPLICATION OF SECTION.

1. NOTICE OF CONTEST.
2. PROVISIONS AS TO AFFIDAVITS ARE MANDATORY.
3. OATH MUST BE BY APPLICANT.
4. OATH BY OFFICER OF CORPORATION.
5. OFFICER AUTHORIZED TO VERIFY AFFIDAVITS—PLACE OF VERIFICATION.
6. OATH ADMINISTERED BY AGENT OF CORPORATION—EFFECT.
7. AMENDMENT OF VERIFICATION OR AFFIDAVIT.

1. NOTICE OF CONTEST.

This section provides for a contest of lands, whether agricultural or mineral, and all persons have an opportunity to initiate a contest, and after initiating such a contest they are entitled to personal notice of all the proceedings thereafter taken, and a person not initiating a contest can not complain that personal notice was not given.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 257.

2. PROVISIONS AS TO AFFIDAVITS ARE MANDATORY.

The statutory provisions as to the affidavit to an application for a mining claim, as well as those providing for publication and posting of notice by the preceding section, are mandatory and their observance is essential to the jurisdiction of local officers to entertain patent proceeding, and any action taken without compliance with these provisions is a nullity, and there is no such substantial compliance with the law as will justify submission for equitable consideration.

El Paso Brick Co., In re, 37 L. D. 155, p. 159.

See Crosby & Other Lode Claims, In re, 35, L. D. 434.

The items of proof to establish a right to a patent to a mining claim should be prepared strictly in accordance with the directions in mining regulations, and verified in the manner prescribed by this section.

Phosphate Deposits, In re, 17 C. L. O. 74, p. 75.

The provisions of this statute requiring affidavits to be verified before an officer authorized to administer oaths in the land district in which the mining claim is situated are mandatory and their observance essential to the jurisdiction of the local officers to entertain the patent proceedings, and where not so verified the affidavit is wholly void.

North Clyde Quartz Min. Claim & Mill Site, In re, 35 L. D. 455, p. 456.

See *Mattes v. Treasury Tunnel, etc., Co.*, 34 L. D. 314.

El Paso Brick Co., In re, 37 L. D. 155, p. 158.

3. OATH MUST BE BY APPLICANT.

Under this section the oath required in case of an application for a patent for a mining claim must be by the applicant, and this was the law until the act of January 22, 1880 (21 Stat. 61).

Crosby & Other Lode Claims, In re, 35 L. D. 434, p. 435.

See *Frue*, In re, 7 C. L. O. 20.

This section does not authorize an application for a mineral patent and the necessary affidavits to be made by an agent where the applicant himself resides in and is physically within the land district at the time of making his application.

Drescher, In re, 41 L. D. 614, p. 615.

4. OATH BY OFFICER OF CORPORATION.

The oath to an adverse claim made by the president of a corporation in Louisville, Ky., does not meet the requirements of the law where it appears that the corporation itself was organized under the laws of Colorado.

Louisville Gold Min. Co. v. Hayman Min., etc., Co., 33 L. D. 680, p. 682.

An adverse claim by a corporation verified by its executive officer outside of the land district where the claim is situated, and at the principal place of business of such corporation, is the act of the corporation itself.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 103.

5. OFFICER AUTHORIZED TO VERIFY AFFIDAVITS—PLACE OF VERIFICATION.

This section authorizes affidavits to be verified before any officer authorized to administer oaths in any district where the land is situated.

Mattes v. Treasury Tunnel, Min., etc., Co., 34 L. D. 314, p. 316.

Verifications of applications for patent, or affidavits relating thereto, must be made before an officer authorized to administer oaths within the land district where the claim is situated, and the verification before an officer acting without authority under the law is of no legal effect, and a notice published by a register based upon such an application and affidavit is fatally defective, and an entry can not stand.

Milford Metal Mines Investment Co., In re, 35 L. D. 174, p. 175.

El Paso Brick Co., In re, 37 L. D. 155, p. 158.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 102.

See *Southern Cross Gold Min. Co. v. Sexton*, 31 L. D. 415.

Mattes v. Treasury Tunnel, Min., etc., Co., 33 L. D. 553, p. 554.

An adverse claim not sworn to before an officer authorized to administer oaths within the land district must be rejected.

Corning Tunnel, Min., etc., Co. v. Pell, 3 C. L. O. 130, p. 131.
 Dardanelles Min. Co. v. California Min. Co., Copp's Min. Dec. 161.
 McMurdy v. Streeter, 1 C. L. O. 34.

This section requires all necessary affidavits in connection with the mining laws to be verified before any officer authorized to administer oaths within the land district where the claim is situated.

Drescher, In re, 41 L. D. 614, p. 615.

This section contemplates that proofs in support of an application should be verified not only before an officer authorized to administer oaths within a land district wherein a claim applied for is situated, but that they should be actually verified within the land district.

Mattes v. Treasury Tunnel, Min., etc., Co., 34 L. D. 314.
 Home Min. Co., In re, 42 L. D. 526, p. 527.
 Overruling Lonergan v. Shockley, 33 L. D. 238.

An affidavit authorized by this section can not be verified before an officer outside of the land district, though his jurisdiction extends over the land district in which the claim is located.

Mattes v. Treasury Tunnel, Min., etc., Co., 34 L. D. 314, p. 317.
 Overruling Lonergan v. Shockley, 33 L. D. 238.
 Corning Tunnel, Min., etc., Co. v. Pell, 3 C. L. O. 130.

Prior to the act of 1882 (22 Stat. 49), the oath to an adverse claim was required to be made by the claimant and to be verified by an officer authorized to administer oaths within the land district wherein the claim was situated.

Louisville Gold Min. Co. v. Hayman Min., etc., Co., 33 L. D. 680, p. 682.

All affidavits required under the mining laws must be verified before any officer authorized to administer oaths within the land district, except as otherwise expressly provided by the amendatory act of January 22, 1880 (21 Stat. 61).

Stock Oil Co., In re, 40 L. D. 198, p. 199.

Affidavits of citizenship, under this section, must be sworn to before a qualified officer of the land district in which the mining claim is located, and the amendatory act of January 22, 1880 (21 Stat. 61), does not change this rule.

Phillips, In re, 8 C. L. O. 5.

Under this section an oath in support of an adverse claim may be verified before any officer authorized to administer oaths within the land district where the claim is situated, and by the act of April 26, 1882 (22 Stat. 49), the oath may in certain specified instances be made before an officer outside the land district, yet under either statute the oath must be made before an officer authorized to administer it.

Mattes v. Treasury Tunnel, Min., etc., Co., 33 L. D. 553, p. 555.
 Mattes v. Treasury Tunnel, Min., etc., Co., 34 L. D. 314 (on review).
 Overruling Lonergan v. Shockley, 33 L. D. 238.
 Corning Tunnel Min., etc., Co. v. Pell, 3 C. L. O. 195.
 Dardanelles Min. Co. v. California Min. Co., Copp's Min. Dec. 161.

6. OATH ADMINISTERED BY AGENT OF CORPORATION—EFFECT.

A notary public who is duly commissioned and acting within the land district is not incapacitated from administering an oath to an application for a mining claim, where the applicant is a corporation, merely because he is secretary of the corporation, where it appears that he was not a stockholder and was not otherwise beneficially interested in such corporation.

Milford Metal Mines Investment Co., In re, 35 L. D. 174, p. 175.

The fact that an application for patent for a mining claim and the affidavits as to publication and posting of notice were verified before a notary public who was interested as an attorney in prosecuting the patent proceedings does not render them void but voidable only and subject to amendment.

Stock Oil Co., In re, 40 L. D. 198, p. 204-206.

Overruling Bright v. Elkhorn Min. Co., 9 L. D. 503.

See Coalina Hub Oil Co., In re, 40 L. D. 401, p. 405.

7. AMENDMENT OF VERIFICATION OR AFFIDAVIT.

The verification of an application for patent for a mining claim and affidavit required in connection therewith are subject to amendment where there is no question as to the fact of notice, and when amended to conform to the requirements, an entry may be permitted, or if already allowed may be permitted to stand.

Stock Oil Co., In re, 40 L. D. 198, p. 206.

Overruling El Paso Brick Co., In re, 37 L. D. 155.

Crosby and Other Lode Claims, In re, 35 L. D. 434.

See Coalina Hub Oil Co., In re, 40 L. D. 401, p. 405.

An application for patent for mining claim and the proof of posting notice must be verified before a competent officer in the land district in which the claim is located, but in the absence of an adverse claim or protest, the claimant may be permitted to substitute proper affidavits.

Pinedo, In re, Copp's Min. Lands 266.

Phillips, In re, 8 C. L. O. 5.

SECTION 2336, REVISED STATUTES.

Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Same as section 14, act of May 10, 1872 (17 Stat. 91, p. 95), p. 682.

A. OWNERSHIP OF INTERSECTING VEINS.

1. CONSTRUCTION OF SECTION.
2. APPLICATION OF SECTION TO LOCATIONS AND VEINS.
3. VEINS—CONSTRUCTION AND MEANING.
4. CROSSING AND INTERSECTING OF VEINS—DIP AND STRIKE.
5. OWNERSHIP OF ORE AT INTERSECTION—PRIORITY OF LOCATION.
6. SPACE OF INTERSECTION—MEANING.
7. OWNERSHIP BELOW INTERSECTION—PRIORITY OF LOCATION.
8. RIGHT OF WAY TO JUNIOR LOCATOR—MEANING AND EXTENT.
9. ADVERSE PROCEEDINGS—APPLICATION AS TO INTERSECTION.
10. FEDERAL QUESTION.

1. CONSTRUCTION OF SECTION.

This section is in complete harmony with section 2322 R. S. and the two coact to establish a rule for the easy definition of miners' rights and the elimination therefrom of the uncertainties existing under former laws, and taken together they substitute for the old lode claim under former acts well-defined segment of the earth with its mineral contents, and not only define the rights of every locator upon his vein or lode, but also define the rights of all locators where their veins or lodes intersect or cross each other.

Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 64.

Where there can be a reasonable and apparent construction of this section by which it will not be in conflict with section 2322, then such construction must be given and must govern.

Wilhelm v. Silvester, 101 Cal. 358, p. 361.

This section is not in conflict with 2322, but supplements it.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 505.

This section is not intended to limit or define the rights of a person in mere possession of a tract of mining ground where there is more than one vein, or to prescribe the effect of a conveyance by a locator of a claim of a portion of his location containing one of such veins; but the object is to supplement the provisions of section 2322 and

the prescribed rules under which different locations by different proprietors should be held and to determine the rights of such proprietors in case of intersecting veins.

Stinchfield v. Gillis, 107 Cal. 84, p. 89.

This section does not purport to provide for the location of cross veins over territory included within a prior valid and subsisting location, but its purpose is to fix the rights of the claimants of such veins, to settle apparent conflicting rights between claimants of veins crossing or intersecting, and to provide easements for the benefit of such claimants.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 15, overruling *Branagan v. Dulaney*, 8 Colo. 408.

There is nothing in the language of this section relating to the time or method of locating a claim, and it can not in any way amend, modify, repeal, or otherwise affect the language of section 2322 R. S., giving locators possessory title and the exclusive right of possession of the surface and of all veins, lodes, and ledges apexing within the surface lines.

Nash v. McNamara, 30 Nev. 114, p. 135.

2. APPLICATION OF SECTION TO LOCATIONS AND VEINS.

The provisions of this section apply to locations made under the act of 1872 (17 Stat. 91), as well as before.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 507.

The provisions of this section apply to locations made under the act of May 10, 1872 (17 Stat. 91), as well as before, and refer to the intersecting or crossing of veins either upon their strike or dip, and the space of intersection, in determining the ownership of ore within such space, means either intersection of veins or conflicting claims, according to the facts in each particular case, and the section grants a right of way to the junior claimant for the convenient working of his mine through such space upon the veins, underneath the surface, which he owns or controls outside of such space of intersection.

Calhoun Gold Mining Co. v. Ajax Gold Mining Co., 27 Colo. 1, p. 22.

Overruling *Branagan v. Dulaney*, 8 Colo. 408.

Lee v. Stahl, 13 Colo. 174, p. 176.

The assumption that the provisions of this section can not be applied to locations made since the passage of the mining law of 1872 on veins which intersect upon their strike without bringing it in conflict with section 2322 is unwarranted.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 506.

This section has no application to mill sites which have been patented and which lie across, separating in two parts, lode claims.

Andromeda Lode, In re, 13 L. D. 146, p. 147.

This section has no application to a case where the end of a lode simply is made to project into the surface of another prior claim.

Correction Lode, In re, 15 L. D. 67, p. 69.

See *Engineer Min., etc., Co.*, In re, 8 L. D. 361.

This section refers to a case where priority of title governs, and can have no application to a party who has no title.

Wilhelm v. Silvester, 101 Cal. 358, p. 363.

In case of a single vein discovery, the portion thereof appropriated by the first discoverer is wholly withdrawn from interference or claim by any other citizen until some default is made, but this rule does not apply to the location of cross lodes.

Omar v. Soper, 11 Colo. 380, p. 389.

The fact that one survey overlaps but does not cross or intersect a prior location does not bring it within the purview of this section, as the purpose of this section is to provide for the working of such claims as cross and lie on both sides of a senior location or entry.

Engineer Min., etc., Co., In re, 8 L. D. 361, p. 362.
See Consolidated Min. Co., In re, 11 L. D. 250.

3. VEINS—CONSTRUCTION AND MEANING.

The construction given the word vein, under this section, gives it the larger meaning and indicates the vein location or vein claim, rather than indicating bodies of mineral or mineral-bearing rock in place.

Brick Pomeroy Mill Site, In re, 34 L. D. 320, p. 323.
See Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 505.

This section conforms to the custom among miners to regard and treat the vein as a unit and indivisible in point of width, in reference to the right to pursue it extralaterally beneath the surface. The reason of this is that the width of the vein usually is so irregular and its strike and dip depart so far from right lines that it is altogether impracticable and often impossible to continue the longitudinal bisection at the apex throughout the vein on its dip or downward course, and further for the reason that it conforms to the principle pervading the mining laws that priority of discovery and location gives the better right.

Lawson v. United States Min. Co., 207 U. S. 1, p. 13.

4. CROSSING AND INTERSECTING OF VEINS—DIP AND STRIKE.

Veins may cross on both strike and dip.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 506.

This section makes provision for a cross or intersecting lode.

Griffin, In re, 2 L. D. 735, p. 737.

The United States statutes recognize intersecting veins and provide for the rights of owners thereof.

Cratty v. Routt, 7 C. L. O. 132, p. 134.

There may be a union of veins or lodes in their downward course partly on the strike and partly on the dip of such veins or lodes.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 546.

The requirement that a valid location of a mining claim must have all portions of the lode contiguous and without an intervening claim, is distinguishable from that of a cross or intersecting lode, as provided in this section.

Griffin, In re, 2 L. D. 735.

This section impliedly recognizes the two kinds of intersections of quartz ledges where they intersect and unite in their horizontal extension or on their strike, and also where they intersect or unite on their dip or lateral in their downward course, and in the latter case the owner of each ledge has rights at the point of intersection entirely consistent with all the provisions of section 2322.

Wilhelm v. Silvester, 101 Cal. 358, p. 361.
Watervale Min. Co. v. Leach, 4 Ariz. 34.

Congress evidently intended, by the provisions of this section, to define the rights of locators where lodes or ledges intersect on their dip, as indicated by giving to the prior locator the vein below the point of union, and this expression would not apply at all to a union on the strike of two veins.

Wilhelm v. Silvester, 101 Cal. 358, p. 362.
Watervale Min. Co. v. Leach, 4 Ariz. 34; 33 Pac. 418.

Congress did not intend to give the preference to a prior locator in case of veins uniting on the "strike" as well as on the dip, after the point of union is reached, without regard to adverse proceedings, and the words "below the point of union" in this section do not apply to a union of veins on the strike, but only on the dip.

Lee v. Stahl, 13 Colo. 174, p. 178.

The words "intersect" and "cross," as used in this section, are not strictly synonymous, and in using both terms it must be presumed that Congress intended to provide for different conditions.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 16.

5. OWNERSHIP OF ORE AT INTERSECTION—PRIORITY OF LOCATION.

This section provides for the ownership of minerals where one vein or lode crosses or intersects another.

Watervale Min. Co. v. Leach, 4 Ariz. 34, pp. 56, 66.

Criticizing Hall v. Equator, etc., Min. Co., 11 Fed. Cas. 222; Morr. Min. Rights 282.

This section provides that where two or more veins intersect or cross each other the prior locator shall be entitled to all the mineral within the space of intersection.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 121 Fed. 973, p. 977.

United States Min. Co. v. Lawson, 134 Fed. 769, p. 774.

Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, p. 68.

Under this section the prior locator is given the right to take all mineral at the point of intersection of his own and the vein of a subsequent locator.

Tombstone Min., etc., Co. v. Way Up Min. Co., 1 Ariz. 426, p. 462.

This section provides that at the space of intersection of two lodes the first locator shall have the ore and the junior locator shall have the right of way through the space to pursue and work his vein; and if there is a union of the two lodes the senior locator shall take the ore at the space of intersection and all of the vein below the point of intersection.

Watervale Min. Co. v. Leach, 4 Ariz. 34, pp. 60, 63.

In cases where this section does not apply and where there is no other law or mining custom applicable to the facts, a grantee of the surface ground must be held to take all the mineral at the point of intersection.

Stinchfield v. Gillis, 107 Cal. 84, p. 91.

This section gives to the prior locator, where veins unite, all ore or mineral within the space of intersection and the vein below the point of union, notwithstanding the provisions of section 2322.

Calhoun, etc., Min. Co. v. Ajax, etc., Min. Co., 182 U. S. 499, p. 504.

If the vein of a prior location crossed another, such vein would not disturb the possession of the subsequent location, except as to the extent of the cross vein, and would entitle the prior location to the ore and mineral contained in the space of intersection, and the subsequent locator would be entitled only to a right of way to the extent of his cross vein for the purpose of working his mine, and to no other right, and he would be liable as a trespasser for taking ore in the space of intersection.

Pardee v. Murray, 4 Mont. 234, p. 279.

The rule that priority of title shall govern as to the ownership of mineral contained within the space of intersection of two veins can not be applied to a case where a claimant conveys a part of his mining claim to a third person, as in such case there is no "prior location," and if an intersection takes place on the part of a claim so conveyed the grantee takes all the mineral within the space of intersection.

Stinchfield v. Gillis, 107 Cal. 84, p. 90.

The owner of two veins or lodes which united and at a depth below the point of union intersected the vein of another may recover for ore taken by the latter at the point of intersection if either of his veins had its apex in a senior location.

Little Josephine Min. Co. v. Fullerton, 58 Fed. 521, p. 528.

The authority of this section giving a prior locator the mineral at the intersection of two separate veins or lodes, or in the entire vein below the point of union, does not apply to a single vein.

Omar v. Soper, 11 Colo. 380, p. 389.

The prior locator is entitled to all the ore of cross veins at the point of intersection; but the junior locator has an easement for a right of way to follow his vein across the prior location for the convenient working of the same.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 8.

6. SPACE OF INTERSECTION—MEANING.

The space of intersection, in determining the ownership of ore within such space, means either intersection of veins or conflicting claims, according to the facts in each particular case, and grants a right of way to the junior claimant for the convenient working of his mine through such space upon the veins which he owns or controls outside of that space—but this space upon the veins means the space underneath the surface. This construction harmonizes this and section 2322 R. S., but limits this section to intersections consistent with the provisions of section 2322.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co. 182 U. S. 499, p. 507.
See *Pardee v. Murray*, 4 Mont. 234.

The "ore within the space of intersection" means the body of ore bounded by the foot and hanging walls of one lode extended in the general course of that lode and the foot and hanging walls of the intersecting lode extended upon its general course, and it is to this body of ore that this section relates.

Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 63.

The term "space of intersection," as used in this section, refers to the intersection of the veins or lodes.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 17.
Overruling Branagan v. Dulaney, 8 Colo. 408.
Lee v. Stahl, 13 Colo. 174, p. 176.

7. OWNERSHIP BELOW INTERSECTION—PRIORITY OF LOCATION.

This section clearly provides that the oldest or prior location shall take the vein below the point of union, and this applies to veins intersecting on their dip, as such an expression could not apply to the intersection of veins on the strike.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 506.
Little Josephine Min. Co. v. Fullerton, 58 Fed. 521, p. 522.
Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 62 Fed. 945, p. 947.
Roxanna Gold Min., etc., Co. v. Cone, 100 Fed. 168, p. 171.
See *Watervale Min. Co. v. Leach*, 4 Ariz. 34.
Wilhelm v. Silvester, 101 Cal. 358.

Under this section priority of location gives priority of title where two or more veins intersect or cross each other, and where they unite, the prior location takes the vein below the union, including all the space of intersection.

Colorado Central, etc., Min. Co. v. Turck, 50 Fed. 888, p. 892.

If two or more veins unite the oldest or prior location is entitled to the vein below the point of union, including all the space of intersection; and in this respect this section is not in conflict with section 2322 R. S.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 546.
Wilhelm v. Silvester, 101 Cal. 358.
Watervale Min. Co. v. Leach, 4 Ariz. 34.

By this section the first locator and patentee of a lode gets only such part of a cross and intersecting vein as lies within the space of intersection to the exclusion of the remainder of such lodes and veins lying within his own territory, and this section has a controlling effect over the prior section and limits the right of the first locator of a mining claim in and to cross and intersecting veins to the ore which may be found at the space of intersection.

Hall v. Equator Min., etc., Co., 11 Fed. Cas. 222, p. 224.

Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 65.

See Branagan v. Dulaney, 8 Colo. 408.

Lee v. Stahl, 9 Colo. 208.

The question of the right to the vein below the point of junction where two or more veins unite must be determined according to the priority of the surface location.

Champion Min. Co. v. Consolidated Wyoming Gold Min. Co., 75 Cal. 78, p. 80.

Under an issue as to whether a plaintiff was the owner of a vein having its apex within his location after it had passed under the side lines of an adjoining location, a defendant may show that both parties had the apex of separate veins within the boundaries of their respective claims, and which, in descending, became united within the side lines of his own claim, giving him the right to hold all the vein from the point of junction downward.

Colorado Central, etc., Min. Co. v. Turck, 50 Fed. 888, p. 892.

The provision of this section to the effect that where two or more veins unite the eldest or prior location shall take the vein below the point of union, including all the space of intersection, contemplates an inquiry and decision after patent, and in such case the inquiry and decision could only be had in a court of competent jurisdiction, and this rule obtains as to all subterranean rights.

Lawson v. United States Min. Co., 207 U. S. 1, p. 17.

Argentine Min. Co. v. Terrible Min. Co., 122 U. S. 478.

8. RIGHT OF WAY TO JUNIOR LOCATOR—MEANING AND EXTENT.

Where two veins intersect the junior locator has a right of way through the space of intersection for the purpose of the convenient working of the mine.

Silver Queen Lode, In re, 16 L. D. 186.

The right of way provided for through the space of intersection in cross veins is a way of necessity for the purpose of excavating and taking away the mineral contained in the cross vein.

Correction Lode, In re, 15 L. D. 67, p. 69.

Branagan v. Dulaney, 8 Colo. 408.

Where a vein of a junior locator crosses a senior location, the junior locator has a way of necessity through such senior location for the purpose of excavating and removing the mineral contained in such cross vein.

Little Josephine Min. Co. v. Fullerton, 58 Fed. 521, p. 522.

Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 63.

Branagan v. Dulaney, 8 Colo. 408, p. 413.

Lee v. Stahl, 9 Colo. 208, p. 210.

Morgenson v. Middlesex Min., etc., Co., 11 Colo. 176, p. 178.

See Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1.

This section imposes a servitude upon the senior location, but does not otherwise affect the exclusive right given to the senior locator, but only gives a right of way to the junior locator.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 505.

A junior locator is entitled to hold and follow the vein or lode apexing in his claim into disputed territory, except at the point of its intersection with another vein.

Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 296.

Branagan v. Dulaney, 8 Colo. 408.

Lee v. Stahl, 9 Colo. 208.

Lee v. Stahl, 13 Colo. 174.

This section applies only to cross lodes and provides a right of way through the space of intersection which divides the two sections of the intersected vein or lode for the purpose of the convenient working of the mine.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co., 121 Fed. 973, p. 977.

Correction Lode, In re, 15 L. D. 67, p. 69.

Patent Extension Lode, In re, 15 L. D. 133, p. 134.

Pardee v. Murray, 4 Mont. 234, p. 279.

The fact that a junior locator has a right to follow and work his vein on its downward dip into a senior location, and to the point of intersection of the two veins, does not affect the senior locator's right to the possession of the entire surface of his claim.

Oscamp v. Crystal River Min. Co., 58 Fed. 293, p. 296.

A subsequent locator holds his unpatented claim subject to the prior rights of a patentee, as prescribed in this section, and a grantor of a portion of his claim, in the absence of any reservation, holds the ungranted portion subordinate to the rights of his grantee in the grant conveyed.

Stinchfield v. Gillis, 107 Cal. 84, p. 89.

Where two veins or lodes cross each other or unite, this section authorizes a subsequent locator to cross or enter upon the territory of the prior locator of one of such veins or lodes.

Omar v. Soper, 11 Colo. 380, p. 389.

Where patent is not sought for surface ground embraced in another mining claim, at the intersection of the two claims, yet as the applicant's vein may extend through the ground belonging to the other claimant, and still not intersect with his vein, yet the right of the other claimant at the point of intersection is vested by law and should not be limited by the patent; and the right of the applicant to pursue his vein is equally protected and should not be prejudiced by this grant to the prior claimant; and under such circumstances the interests of both claimants can be fully protected by making the excepting clause in favor of the claimant as broad as the granting clause to the prior claimant, and by so doing both will receive all that the law gives them and neither will have any legal advantage.

Adelaide Consol. Silver Min., etc., Co. v. Gallagher, 6 C. L. O. 73, p. 74.

9. ADVERSE PROCEEDINGS—APPLICATION AS TO INTERSECTION.

The effect of the provision of this section is to exclude a cross lode, except at the point of lode intersection, as not a subject of grant, and being thus excepted from a grant, it follows that the right to it is not lost by failure to adverse; but this does not include the space of lode intersection, and a prior locator, to secure this and other rights which he has by virtue of his prior location, must adverse, whether his prior location was made after the act of July 28, 1866 (14 Stat. 251), or the act of May 10, 1872 (17 Stat. 91).

Lee v. Stahl, 9 Colo. 208, p. 210.

See *Morgenson v. Middlesex Min., etc., Co.*, 11 Colo. 176, p. 178.

10. FEDERAL QUESTION.

The right to follow a vein having its apex in another location upon its dip beneath the surface, and to appropriate the gold found in such vein at the point of intersection of the vein having its apex in another location, involving a construction of this section, does not necessarily present a Federal question so as to give a Federal court jurisdiction.

Gillis v. Stinchfield, 159 U. S. 658, p. 659.

SECTION 2337, REVISED STATUTES.

Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

Same as section 15, act of May 10, 1872 (17 Stat. 91, p. 95), p. 683.

A. CONSTRUCTION AND APPLICATION OF SECTION.

B. MILL-SITE LOCATIONS, p. 595.

C. APPLICATION FOR PATENT FOR MILL SITE, p. 597.

D. ADVERSE CLAIMS, p. 606.

E. MILL SITE WITHIN LIMITS OF RAILROAD GRANT—NO PATENT, p. 607.

F. CORPORATION'S RIGHT TO PATENT FOR MILL SITE, p. 607.

G. SURVEY OF MILL SITE—SUFFICIENCY, p. 607.

A. CONSTRUCTION AND APPLICATION OF SECTION.

1. PURPOSE OF SECTION.

2. PURPOSE OF FIRST CLAUSE OF SECTION.

3. CONSTRUCTION OF SECOND CLAUSE OF SECTION.

4. MEANING OF "VEIN OR LODE" IN THIS SECTION.

1. PURPOSE OF SECTION.

This section makes specific provision for the sale of public lands for mill-site purposes.

Phoenix Gold Min. Co., In re, 40 L. D. 313, p. 314

The purpose of this section is to grant an additional tract to a person who expects to use it in connection with a lode claim, and where he needs more land for working his claim or reducing his ores than the law gives him in his mining claim proper; and if an applicant is not actually using the land he must show such an occupation by improvements or otherwise as evidences an intention to use the tract in good faith for mining or milling purposes.

Lennig, In re, 5 L. D. 190, p. 192.

This section evidently intends to give to the operator of a lode claim a tract of land not exceeding five acres for the purpose of conducting mining or milling operations thereon in connection with such lode and excludes the idea that the mill site is to be

used in connection with other lodes, and the object of the mill site is to subserve the necessities of the lode to which it is attached for mining and milling purposes.

Mint Lode & Mill Site, In re, 12 L. D. 624, p. 625.

Gold Springs & Denver City Mill Site, In re, 13 L. D. 175, p. 177.

One object of this section in giving the right to appropriate a mill site on nonmineral lands and not contiguous to a lode claim was to prevent the acquisition of any additional part of the vein or lode on which the claim was predicated; but the location of a mill site upon nonmineral land does not come within the prohibition where it is in contact with the side lines of a lode claim.

Yankee Mill Site, In re, 37 L. D. 674, p. 677.

Overruling Brick Pomeroy Mill Site, In re, 34 L. D. 320.

This section permits two classes of claims to be entered—one is of nonadjacent surface ground used or occupied by the proprietor of a vein or lode for mining or milling purposes.

Eclipse Mill Site, In re, 22 L. D. 496, p. 497.

This section authorizes the issue of patents for nonmineral lands not contiguous to a vein or lode which is used or occupied by the proprietor of a vein or lode claim for mining or milling purposes, and it also permits the owner of a quartz mill or reduction works, not owning a mine in connection therewith, to receive a patent for his mill site; and a person having a possessory right to a vein or lode and to a piece of nonmineral land not contiguous thereto used for mining or milling purposes may include such nonmineral tract with his application for a patent to the lode claim.

Bailey, In re, 11 C. L. O. 277, p. 278.

Whether or not the land entered as a mill-site claim is subject to disposal under the mining laws and whether or not the statutory requirement in respect to the publication notice was complied with are questions which concern the Government.

Reed v. Bowron, 32 L. D. 383, p. 384.

See Adams v. Quijeda, 25 L. D. 24, p. 26.

The object of this section is to permit title to land to be acquired for mill sites to be located on mineral lands which do not contain valuable mineral-bearing veins or mineral deposits, and there is no reason for a distinction on account of the character of ore or the ownership of nonownership of a mine in connection with a mill site.

Cleary v. Skiffich, 28 Colo. 362, p. 367.

This section clearly recognizes a valid mill site as a mining possession.

Hartman v. Smith, 7 Mont. 19, p. 29.

2. PURPOSE OF FIRST CLAUSE OF SECTION.

The purpose of the first clause of this section is to permit the proprietor of a lode mining claim to acquire a small tract of noncontiguous, nonmineral land as directly auxiliary to the prosecution of active mining operations upon his lode claim, or for the erection of a quartz mill or reduction works for the treatment of the ore produced by such operations, but the area of such additional tract is restricted to 5 acres, creating the inference that the mill-site provision is intended to subserve a recognized practical necessity, contemplating the acquisition for a specified purpose in connection with mining rights, and is not a provision for the acquisition of merely additional superficies in connection with a lode location.

Alaska Copper Co., In re, 32 L. D. 128, p. 129.

Under the first clause of this section it is not necessary that the land applied for be actually a mill site, but the use or occupation of it for mining or milling purposes is a prerequisite to a patent.

Lennig, In re, 5 L. D. 190, p. 192.

3. CONSTRUCTION OF SECOND CLAUSE OF SECTION.

The right to a patent for a mill site under the second clause of this section depends upon the existence on the land of a quartz mill or reduction works.

Helca Consol. Min. Co., In re, 12 L. D. 75, p. 77.

Lennig, In re, 5 L. D. 190.

Cypress Mill Site, In re, 6 L. D. 706.

Two Sisters Lode & Mill Site, In re, 7 L. D. 557.

Le Neve Mill Site, In re, 9 L. D. 460.

Gold Springs & Denver City Mill Site, In re, 13 L. D. 175, p. 177.

Brodie Gold Reduction Co., In re, 29 L. D. 143, p. 144.

The second clause of this section makes the right to patent a mill site depend upon the existence upon the site of a quartz mill or reduction works, but under the first clause it is not necessary that the land be actually a mill site, but it must be used or occupied for mining or milling purposes as the only prerequisite for patent; and the proprietor of a lode claim is using noncontiguous land for mining or milling purposes if he has a quartz mill or reduction works thereon, or if he uses it for depositing tailings, or storing ores, for shops, or houses for his workmen, or for collecting water to run his quartz mill.

Lennig, In re, 5 L. D. 190, p. 192; 13 C. L. O. 197.

Eclipse Mill Site, In re, 22 L. D. 496.

4. MEANING OF "VEIN OR LODGE" IN THIS SECTION.

Constructing this section with other sections of the mining statutes the words "vein or lode" are intended to be understood in each instance in a larger sense, indicating the location rather than in the restricted sense of indicating a body of mineral or mineralized rock in place, technically known as a vein or lode.

Brick Pomeroy Mill Site, In re, 34 L. D. 320, p. 323.

Yankee Mill Site, In re, 37 L. D. 674, p. 676.

Montana-Illinois Copper Min. Co., In re, 42 L. D. 434, p. 436.

B. MILL-SITE LOCATIONS.

1. LOCATION AS MINING CLAIM—RIGHTS OF LOCATOR.
2. POSSESSION OF MILL SITE.
3. ADJACENT AND NONCONTIGUOUS—MEANING.
4. MILL SITE ON CONTIGUOUS LAND—EXCEPTIONS.

1. LOCATION AS MINING CLAIM—RIGHTS OF LOCATOR.

While the statute is silent as to the location of mill sites, yet such locations must be made substantially as that of a mining claim.

Hargrove v. Robertson, 15 L. D. 499, p. 502.

Rico Town Site, In re, 1 L. D. 556.

Mill sites must be located upon nonmineral land.

Howard, In re, 15 L. D. 504, p. 505.

See Alta Mill Site, In re, 8 L. D. 195.

A mill site location must be made by the owner or proprietor of a lode or a quartz mill or reduction works, and the letter of the statute would seem to require that such mill site ought to be used in connection with such lode for mining or milling purposes before a legal location can be made.

Rico Town Site, In re, 1 L. D. 556.

The location of a mill site, perfected according to law, like that of a quartz lode mining claim, operates as a grant by the United States of the present and exclusive

possession of all surface ground included within its limits, and can not be included in a subsequent town-site entry and patent.

Hartman v. Smith, 7 Mont. 19, p. 29.

The locator of a mill site prior to that of a conflicting lode claim is entitled to all the surface area embraced within the exterior boundaries of his survey which is not included within the limits of the mineral claim, if such mill site does not lie contiguous to the lode or vein.

Long, In re, 9 C. L. O. 188.

Under this section nonmineral land may be patented as a mill site, subject to the same requirements as to survey and notice as are applicable to veins and lodes.

Snyder v. Waller, 25 L. D. 7, p. 8.

2. POSSESSION OF MILL SITE.

A tract of 5 acres claimed for a mill site may be said to be in the possession of the locator when its corners are marked with banded posts, and he has built thereon a house and stable, and constructed a graded wagon road leading from the mill site to the mines of the locator, and a tunnel constructed to increase the flow of water; and such possession is sufficient to enable him to maintain an action of ejectment against an intruder.

Valcalda v. Silver Peak Mines, 86 Fed. 90, p. 94.

An application for patent for nonmineral land as a mill site is not a mineral location with a view of acquiring title under the mining laws, and possession and occupancy of ground for a mill site can not be regarded as extending beyond the space actually used as such.

Burns v. Clark, 133 Cal. 634, p. 636.

3. ADJACENT AND NONCONTIGUOUS—MEANING.

The word adjacent, as generally defined and understood, means by, or near, and close, but not actually touching; and nonadjacent, representing the opposite situation, means not near, and not close.

Brick Pomeroy Mill Site, In re, 34 L. D. 320, p. 324.

4. MILL SITE ON CONTIGUOUS LAND—EXCEPTIONS.

Lands contiguous only to the surface ground of a lode claim are not within the prohibition of this section, and this may be true when the mill site is located contiguous to the side lines of the surface of the mining claim.

Freeman, In re, 7 C. L. O. 4.

Ground for a mill site can not be patented where it abuts against the end of a lode claim.

Freeman, In re, 7 C. L. O. 4.

See National Min., etc., Co., In re, 7 C. L. O. 179.

A mill site which abuts upon the end of a lode location is not noncontiguous within the meaning of this section, but the fact of a mill site so abutted upon the end of a lode is not conclusive evidence of its mineral character.

Long, In re, 9 C. L. O. 188.

National Min., etc., Co., In re, 7 C. L. O. 179.

A mill-site claim adjoining the end of a lode mining claim may be patented as noncontiguous land, within the meaning of this section, provided it be clearly shown that the lode or vein along which the mining location is laid either terminates before the end abutting upon the mill-site claim will be reached, or that it departs from the

side line of the mining claim, and where the ground embraced in such adjoining mill-site claim is shown to be nonmineral in character.

Montana-Illinois Copper Min. Co., In re, 42 L. D. 434, p. 436.
See Dillon, In re, 40 L. D. 84.

C. APPLICATION FOR PATENT FOR MILL SITE.

1. MILL SITE PATENTED WITH LODE CLAIM.
2. NOTICE—PUBLICATION AND POSTING—PROOF.
3. NONMINERAL CHARACTER OF LAND.
4. PROOF AS TO LOCATION OF MILL SITE.
5. MILL SITE—LAND NOT CONTIGUOUS TO LODE CLAIM.
6. PROOF OF USE AS MILL SITE NECESSARY.
7. USE OF MILL SITE FOR MINING PURPOSES—MEANING.
8. IMPROVEMENTS ON MILL SITE—SUFFICIENCY AND PROOF.
9. IMPROVEMENTS—QUARTZ MILL SITE OR REDUCTION WORKS.
10. IMPROVEMENTS INSUFFICIENT.
11. USE OF MILL SITE FOR WATER FOR MINING PURPOSES.
 - a. SUFFICIENCY.
 - b. INSUFFICIENCY.
12. USE OF MILL SITE FOR TIMBER FOR MINING PURPOSES.
13. USE OF MILL SITE IN CONNECTION WITH TUNNEL.
14. QUANTITY OF LAND FOR MILL SITE.
15. NUMBER OF MILL SITES.
16. PERFORMANCE OF STATUTORY REQUIREMENTS—REPRESENTATION WORK.

1. MILL SITE PATENTED WITH LODE CLAIM.

Mill sites are recognized by this section where the land is nonmineral and is used by the proprietor of a vein or lode, and may be patented with a vein or lode claim subject to the same requirements as to survey and notice of application.

Rico Town Site, In re, 1 L. D. 556, p. 557.
Silver Star Mill Site, In re, 25 L. D. 165, p. 166.

A person in possession of a mill site may file an application for patent therefor under this section, and he may avail himself of the alternative method to protect his interest therein under a scrip location.

Moore, In re, 11 C. L. O. 326.

Under the first clause of this section the application for a mill site must be made with that of the lode claim and the applications must be simultaneous and the claims patented together, while the second clause of the section is clearly distinguished from the first.

Eclipse Mill Site, In re, 22 L. D. 496, p. 497.

A miner who has constructed valuable improvements and has occupied a tract of nonmineral land for mill site purposes may enter the same with Porterfield scrip.

Moore, In re, 11 C. L. O. 326.
See Weise, In re, 2 C. L. O. 130.

Porterfield Scrip, In re, 3 C. L. O. 83.

An application for a mill site may be denied where the applicant does not claim that he is the owner of a quartz mill or reduction works, and he does not own a mine in connection therewith.

Hamburg Min. Co. v. Stephenson, 17 Nev. 449, p. 460.

2. NOTICE—PUBLICATION AND POSTING—PROOF.

A mill site entry can not be allowed without publication of notice of application, and such an entry is a nullity.

Reed v. Bouron, 26 L. D. 66, p. 67.

Reed v. Bowron, 32 L. D. 383, p. 385.

A patent can not be granted for a mining location and a mill site unless the notice of the application and a copy of the plat are posted in a conspicuous place upon both the lode location and the mill site, though the patent may be granted for the lode location.

Peacock Mill Site, 27 L. D. 373, p. 374.

Disapproving New York Lode & Mill Site Claim, In re, 5 L. D. 513.

The mining regulations require that the application for a patent for a lode and a mill site must show that a copy of the plat and notice of the application were conspicuously posted upon the mill site as well as upon the vein or lode for the statutory period of 60 days.

Silver Star Mill Site, In re, 25 L. D. 165.

An application for patent for a lode claim and contiguous mill site will not be denied because of a failure to post a notice of the application and a copy of the plat upon both the lode claim and the mill site, in the absence of an adverse claim, and where the law has otherwise been substantially complied with, and the informality arose from an honest mistake.

Everest, In re, 14 C. L. O. 52, 151, modifying Vailey, In re, 3 L. D. 386.

An application for a patent for a mill site will not be continued because the location notice and certificate were signed by an agent, where the abstract of title shows the ownership of the lode location with which the mill site was intended to be used, as the application will be presumed to have been made for and in behalf of the proprietor of the mining claim.

Bailey, In re, 11 C. L. O. 277, p. 278.

See Iron Silver Min. Co., In re, 11 C. L. O. 277.

3. NONMINERAL CHARACTER OF LAND.

Only nonmineral lands can be entered as a mill site.

Mongrain v. Northern Pac. R. Co., 18 L. D. 105, p. 106.

Reed v. Bouron, 26 L. D. 66, p. 67.

Mabel Lode, In re, 26 L. D. 675.

Burns v. Clark, 133 Cal. 634, p. 638.

Burns v. Schonfeld, 1 Cal. App. 121, p. 124.

The nonmineral character of land claimed as a mill site must be established before patent can be issued.

Alta Mill Site, In re, 8 L. D. 195, p. 196.

Waller, In re, 20 L. D. 144, p. 145.

Snyder v. Waller, 25 L. D. 7, p. 8.

Under this section nonmineral lands, not contiguous to a lode claim and not exceeding 5 acres, can be appropriated by a lode claim holder for a mill site, and the expenditure of the required sum of money on the lode relieves the claimant from any additional expenditure on the mill site.

Silver Peak Mines v. Valcalda, 79 Fed. 886, p. 890.

Valcalda v. Silver Peak Mines, 86 Fed. 90, p. 91.

See Hartman v. Smith, 7 Mont. 19.

This section permits only nonmineral land not contiguous to a lode claim to be appropriated for mill site purposes and only nonadjacent surface ground can be embraced and included in an application for patent for lode claim, and the area of any such mill site is limited to five acres.

Yankee Mill Site, In re, 37 L. D. 674, p. 675.

See Alaska Copper Co., In re, 32 L. D. 128, p. 131.

Montana-Illinois Copper Min. Co., In re, 42 L. D. 434.

A mill site is an adjunct to a mine, and while it is a claim for obtaining patent to which provision is made in this section, yet it must be upon nonmineral land, and in the ordinary sense is not a mining claim.

Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 146.

Mill sites can only be legally located on nonmineral lands, and State statutes or local rules and regulations of miners granting mill sites inconsistent with this statute are invalid.

Cleary v. Skiffich, 28 Colo. 362, p. 372.

By the exclusion of another mill site, the applicant admits the nonmineral character of the same, as well as the noncontinuity of the vein or lode through such mill site.

Howard, In re, 15 L. D. 504.

Mabel Lode, In re, 26 L. D. 675.

While mill sites are sold under the mining laws, yet they are disposed of as non-mineral land.

Andromeda Lode, In re, 13 L. D. 146, p. 147.

In filing an application for a mill site under this section it is essential that an affidavit as to the nonmineral character of the land be submitted with the record.

Rico Townsite, In re, 1 L. D. 556.

Alta Mill Site, In re, 8 L. D. 195, p. 196.

On an application for a patent for a mining claim including nonmineral land for a mill site a hearing may be ordered to determine the question whether the mill-site land is mineral in character or whether it is more valuable for mill-site purposes, and also as to the improvements made upon the premises.

Becker, In re, 5 C. L. O. 51.

There is no presumption that a vein or minerals extend under lands 2 miles distant from the outcroppings, and a nonmineral or agricultural entryman will not be deprived of a good-faith entry because of the presence of outcroppings of veins or minerals 2 miles distant.

United States v. Kostelak, 207 Fed. 447, p. 453.

This section is a congressional recognition that land near but not contiguous to known veins or lodes may be nonmineral, and if it contains no known valuable mineral deposits it falls into the nonmineral or agricultural class however rich in minerals are the adjoining lands.

United States v. Kostelak, 207 Fed. 447, p. 453.

Where lands are placed on the market and at the time of entry or sale are not known to contain valuable deposits of coal, a nonmineral or agricultural entry is the only entry that can be made; and if time and development should discover mineral deposits of the greatest value in such lands, it is the good fortune of the entryman, of which the Government can take no advantage; and if the Government desires to retain to itself the possibilities of mineral deposits of value Congress must legislate to that end.

United States v. Kostelak, 207 Fed. 447, p. 453.

4. PROOF AS TO LOCATION OF MILL SITE.

In a mill-site application it is sufficient if the application shows that the mill site was located in connection with a lode claim.

Hargrove v. Robertson, 15 L. D. 499, p. 502.

See Esler v. Townsite of Cooke, 4 L. D. 212.

Sierra Grande Min. Co. v. Crawford, 11 L. D. 338.

This section authorizes the location of mill sites prior to the application for patent, and restricts future locations to five acres, and the practice of the Land Department requires evidence of due location of a mill site prior to the publication of notice of application for patent.

Hargrove v. Robertson, 15 L. D. 499, p. 502.

Ground for a mill site may be located by the owner of a lode claim where such lode claim is patented, as the manifest intention of Congress was to grant an additional tract to a person for use in connection with the lode.

Eclipse Mill Site, In re, 22 L. D. 496, p. 499.

5. MILL SITE—LAND NOT CONTIGUOUS TO LODE CLAIM.

The statute permits only nonmineral land not contiguous to a vein or lode to be appropriated for mill-site purposes, and only such nonadjacent ground can be embraced and included in an application for a patent for a lode claim and mill site and limits the area to 5 acres.

Brick Pomeroy Mill Site, In re, 34 L. D. 320, p. 321.

Alaska Copper Co., In re, 32 L. D. 128.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 256.

See North Clyde Quartz Min. Claim & Mill Site, In re, 35 L. D. 455.

Yankee Mill Site, In re, 37 L. D. 674, p. 675.

Montana-Illinois Copper Min. Co., In re, 42 L. D. 434.

Nonmineral lands used for a mill site may be included in an application for a patent for a vein or lode, though not contiguous to such vein or lode.

Esler v. Townsite of Cooke, 4 L. D. 212, p. 214.

Rico Townsite, In re, 1 L. D. 556.

To entitle an applicant to a patent for land as a mill site he must show that the land is nonmineral and that it is noncontiguous to a lode claim, and it must be used or occupied by the proprietor of a lode claim for mining or milling purposes.

Gold Springs & Denver City Mill Site, In re, 13 L. D. 175, p. 176.

6. PROOF OF USE AS MILL SITE NECESSARY.

What constitutes the use of land as a mill site for mining and milling purposes under this section, so as to entitle a person to a patent, is a mixed question of law and fact.

Silver Peak Mines v. Valcaldá, 79 Fed. 886, p. 890.

Hartman v. Smith, 7 Mont. 19.

An applicant for a patent for a mill site must show that it is used in connection with a lode claim for mining and milling purposes.

Gold Springs & Denver City Mill Site, In re, 13 L. D. 175.

Ground can not be patented as a mill site where it is not shown to be used or occupied for mining or milling purposes.

Grand Canyon R. Co. v. Cameron, 36 L. D. 66, p. 70.

Where the evidence as to the occupation of a mill site for milling purposes is conflicting the concurring conclusion of local officers and of the General Land Office will not be disturbed.

Hargrove v. Robertson, 15 L. D. 499, p. 501.

See Creswell Min. Co. v. Johnson, 8 L. D. 440.

This section contemplates that at the time an application for a patent is made and entry allowed the land applied for shall be used or occupied for mining or milling purposes, as the act does not contemplate the performance of conditions subsequent or the future compliance with the law.

Hudson Min. Co., In re, 14 L. D. 544.

The occupation for mining and milling purposes, as required by this section, and so far as it may be distinguished from use, is something more than mere naked possession, but must be evidenced by outward and visible signs of the applicant's good faith.

Lennig, In re, 5 L. D. 190.

7. USE OF MILL SITE FOR MINING PURPOSES—MEANING.

This section contemplates the actual use, by occupation, or improvements, or otherwise, for mining or milling purposes, and that the right to a patent of a mill site depends upon the existence upon the land of a quartz mill or reduction works, and the use or occupation of the land for mining or milling purposes is the only prerequisite for a patent; but the occupation for mining or milling purposes must be more than the mere naked possession.

Cypress Mill Site, 6 L. D. 706, p. 707.

Two Sisters Lode & Mill Site, In re, 7 L. D. 557, p. 558.

See Lennig, In re, 5 L. D. 190.

Eclipse Mill Site, In re, 22 L. D. 496.

The application for patent for a mill site will not be allowed where it appears that no part of such mill site is now or ever has been used or occupied for mining or milling purposes, and no buildings or machinery have ever been put upon or used upon the ground, and no labor has been performed thereon for mining purposes.

Smith, In re, 7 L. D. 415, p. 416.

The use or occupation of land for mining or milling purposes is a prerequisite to a patent under this section, and by the use of the land for mining or milling purposes is meant the operation of a quartz mill or reduction works thereon in connection with mining or milling operations, and such occupation or use is something more than mere naked possession, and must be evidenced by outward and visible signs of the good faith of the applicant; and if the applicant is not actually using the land he must show such an occupation by improvements as evidences an intention to use land in good faith for mining and milling purposes.

Two Sisters Lode & Mill Site, In re, 7 L. D. 557, p. 559.

An application for a patent for a mill site must show that the land is used in connection with a vein or lode, and that the applicant is the owner of a specified mining claim, and it is not sufficient to say that the applicant is the owner of and operating numerous mines.

Hecla Consol. Min. Co., In re, 12 L. D. 75, p. 77.

An application for patent for a mill site should not be approved if the applicant has not complied with the law in the matter of the use or occupation of the mill site tract.

Smith, In re, 15 C. L. O. 207, p. 208.

Land embraced in a mill site can not be included with an application for a patent for a lode location unless it is shown that such mill site is used or occupied for mining or milling purposes in connection with the lode location.

Peru Lode & Mill Site, In re, 10 L. D. 196.

This section contemplates the performance upon the tract claimed as a mill site, at or prior to the date of filing application for patent, of some act in the nature of either

actual use or occupancy for either mining or milling purposes, and a patent can not issue upon a claimant's intention or purpose in a certain contingency to perform acts of use or occupancy.

Ontario Silver Min. Co., In re, 13 C. L. O. 159.

A mill site applied for under this section is required to be used distinctly and explicitly for mining or milling purposes in connection with a lode claim with which it is associated, and this express requirement plainly contemplates a function or utility intimately associated with the removal, handling, or treatment of the ore from the vein or lode.

Alaska Copper Co., In re, 32 L. D. 128, p. 130.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 256.

This section contemplates at the time the application for patent is made the land included in the mill site claim shall be used or occupied for milling purposes, and some steps in or directly connected with the process of mining or some feature of milling must be performed upon, or some recognized agency of operating mining or milling must occupy, the mill site at the time the application for patent is filed.

Hard Cash & Other Mill Site Claims, In re, 34 L. D. 325, p. 327.

Alaska Copper Co., In re, 32 L. D. 128, p. 131.

See *Brick v. Pomeroy Mill Site*, 34 L. D. 320.

The term "mining purposes," as used in this section, may include any reasonable use for mining purposes which a quartz lode mining claim may require, and may consist in the use of a mill site in connection therewith, and if used in good faith for any mining purpose in connection with it is sufficient.

Silver Peak Mines v. Valcalda, 79 Fed. 886, p. 890.

Hartman v. Smith, 7 Mont. 19.

See *Valcalda v. Silver Peak Mines*, 86 Fed. 90, p. 93.

Any use in good faith for any mining purpose in connection with a quartz lode mining claim would be within the meaning of the statute, and it is not intended that it shall be used for such work as is done upon the mine itself because of the requirement of the nonmineral character of the land, and for the further reason that it must not be adjacent to the mining claim.

Hartman v. Smith, 7 Mont. 19, p. 28.

8. IMPROVEMENTS ON MILL SITE—SUFFICIENCY AND PROOF.

An applicant for a patent for a mill site brings himself within this statute where he shows that he owns two houses on such mill site occupied by his employees for purposes in connection with his mill, as the erection of a dwelling house on a mill site is a substantial use and improvement of the land.

Satisfaction Extension Mill Site, In re, 14 L. D. 173, p. 174.

Eclipse Mill Site, In re, 22 L. D. 496.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 256.

It is sufficient to justify patent for a mill site where such lasting improvements, such as a tank, spring house, etc., have been made as to indicate good faith, as this is more than the mere use of water.

Satisfaction Extension Mill Site, In re, 14 L. D. 173, p. 174.

See *Gold Springs & Denver City Mill Site*, In re, 13 L. D. 175.

The use of a mill site for shops or houses for the workmen of a lode claim owner is a mining or milling use.

Lennig, In re, 5 L. D. 190.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 256.

The use of a mill site as a location for a blacksmith shop and tool house, and for the storage of tools, machinery, etc., necessary in running a tunnel, and as a storage place

of supplies needed in mining development work, is a use for mining and milling purposes.

Alaska Copper Co., In re, 32 L. D. 128.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 257.

A mill site with a cabin erected thereon used for storing tools and as an ore house for the ore taken from the mine, is used and occupied for mining or milling purposes within this section.

Hartman v. Smith, 7 Mont. 19.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 257.

9. IMPROVEMENTS—QUARTZ-MILL SITE OR REDUCTION WORKS.

Quartz mills or reduction works are the only kind of improvements contemplated by the last clause of this section on lands sought to be patented for a mill site.

Le Neve Mill Site, In re, 9 L. D. 460.

Cleary v. Skiffich, 28 Colo. 362, p. 370.

Mill-site locations are only authorized where there is a quartz mill or reduction works or buildings or machinery that is or can be used as a quartz mill or reduction works.

Hecla Consol. Min. Co., In re, 14 L. D. 11, p. 12.

The owner of a lode claim uses noncontiguous land for mining and milling purposes either when he has a quartz mill or reduction works thereon or when in any other manner he employs it in connection with mining or milling operations.

Satisfaction Extension Mill Site, In re, 14 L. D. 173, p. 174.

Lennig, In re, 5 L. D. 190.

Under this section the owner of a quartz mill or reduction works may obtain title for the mill site on which his mill is built, and the owner of the quartz-lode mining claim may obtain title to a mill site on nonmineral land not contiguous to the mining claim for either mining or milling purposes.

Shafer v. Constans, 3 Mont. 369, p. 372.

Hartman v. Smith, 7 Mont. 19, p. 26.

The owner of a quartz mill or reduction works who is not the owner of a mine in connection therewith may receive a patent for his mill site under this section.

Rico Townsite, In re, 1 L. D. 556, p. 557.

The department may permit the filing of the proper certificate of the surveyor general to the effect that an applicant has a quartz mill or reduction works upon the ground applied for as a mill site.

Hecla Consol. Min. Co., In re, 14 L. D. 11, p. 12.

10. IMPROVEMENTS INSUFFICIENT.

The entry of a mill site is not authorized where the evidence shows only a frame house, to be used for a storehouse, having no connection with mining operations, and nothing to show that it is to be used in connection with the lode claim owned by the applicant, and where it is not shown with certainty that the tract will ever be used for mining or milling purposes.

Mint Lode & Mill Site, In re, 12 L. D. 624, p. 625.

See *Iron King Mine & Mill Site*, In re, 9 L. D. 201.

Peru Lode & Mill Site, 10 L. D. 196.

Proof that a mill site was located by a third person and occupied by coke ovens for the use of a smelting company is not such a use and occupation of the land as is contemplated by this section.

Syndicate Lode Mill Site, In re, 11 L. D. 561, p. 562.

A mill site is not subject to entry and patent where the only improvement claimed is a dam for tailings.

Hecla Consol. Min. Co., In re, 12 L. D. 75, p. 76.
See Lennig, In re, 5 L. D. 190.

A mill site upon which are located a ditch conveying water to another mill site, and a frame house used for a storehouse, is not a use for mining or milling purposes.

Mint Lode & Mill Site, In re, 12 L. D. 624.
Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 256.

11. USE OF MILL SITE FOR WATER FOR MINING PURPOSES.

a. SUFFICIENCY.

Under the first clause of this section patent may be obtained for lands used in connection with a vein or lode claim where the land is used for a dam and pipe used for driving a water wheel to compress air for the engine and drills used for mining upon adjacent lode claims.

Le Neve Mill Site, In re, 9 L. D. 460, p. 461.

The use and occupancy of land as a mill site and on which pumping works are constructed and maintained for the purpose of operating a lode mining claim is such use as will authorize entry of the land as a mill site.

Sierra Grande Min. Co. v. Crawford, 11 L. D. 338, p. 343.
See Le Neve Mill Site, In re, 9 L. D. 460.

Proof that the improvements on land applied for as a mill site consisted of a tank built for the storage of water sufficient to operate a mine, a spring house and a stone cabin is sufficient to entitle the applicant to a patent.

Gold Springs & Denver City Mill Site, In re, 13 L. D. 175, p. 176.
Eclipse Mill Site, In re, 22 L. D. 496.

The use of land for the maintenance of pumping works necessary to the operation of a recorded mine is such a use as will authorize entry of the land as a mill site.

Satisfaction Extension Mill Site, In re, 14 L. D. 173, p. 174.
See Sierra Grande Min. Co. v. Crawford, 11 L. D. 338.

While water rights are not patentable as such, yet land containing water in which a water right may be acquired may be patented as a mill site.

Lennig, In re, 5 L. D. 190, p. 191.

The ownership of a water right upon a tract of land does not bar a claim to a mill site under this section, as both a water right and a mill site claim may be located on the same tract of land.

Lennig, In re, 5 L. D. 190, p. 191.

b. INSUFFICIENCY.

A mill site used solely for the purpose of supplying water pipes to other mining claims does not satisfy the statute.

Two Sisters Lode & Mill Site, In re, 7 L. D. 557, p. 559.
Mint Lode & Mill Site, In re, 12 L. D. 624, p. 625.
Sierra Grande Min. Co. v. Crawford, 11 L. D. 338, p. 340.
Gold Springs & Denver City Mill Site, In re, 13 L. D. 175, p. 177.
Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 256.
See Cyprus Mill Site, In re, 6 L. D. 706.

The construction of a ditch for conveying water for the use of a lode claim is not the use or occupation of the land for mining or milling purposes within the meaning of this section.

Lennig, In re, 5 L. D. 190, p. 191.

The fact that lands sought to be acquired as a mill site must be used or occupied for the purpose for which it was located or for some purpose in connection with mining or milling, and the use of water is not the use of land within the meaning of this section.

Iron King Mine & Mill Site, In re, 9 L. D. 201.

An application for a patent for land on which there is a spring of water, and where it is claimed that it is necessary for the mining company to have the use of the water for its employees in operating its mineral claims, can not be sustained where the application is not made in connection with any vein or lode and where there is no quartz mill or reduction works upon the land applied for.

Cyprus Mill Site, In re, 6 L. D. 706, p. 708.

12. USE OF MILL SITE FOR TIMBER FOR MINING PURPOSES.

The use of timber on land is not the use of the land, nor is the mere naked possession of a tract of land for the purpose of taking timber therefrom such an occupancy of the land as is contemplated by this section.

Two Sisters Lode & Mill Site, In re, 7 L. D. 557, p. 559.

A mill-site claimant may cut and remove the timber thereon for the purpose of constructing a mill reduction works, tramways, or other accessory required in the development of his mining interest, but he can not make such timber an article of sale for private gain or speculation.

Page, In re, 1 L. D. 614.

13. USE OF MILL SITE IN CONNECTION WITH TUNNEL.

The fact that a mining company owning and occupying a tunnel and using a mill site in immediate connection with the tunnel for the purpose of dumpage for ore, mineral, and rock from such tunnel and other sources for the reason that no other ground is available, and where it has constructed a dam on such mill site for the purpose of utilizing the same as water power in connection with its tunnel, is not sufficient to entitle it to a patent as a mill site.

Peru Lode & Mill Site, In re, 10 L. D. 196, p. 197.

See *Iron King Mine & Mill Site*, In re, 9 L. D. 201.

Two Sisters Lode & Mill Site, In re, 7 L. D. 557.

14. QUANTITY OF LAND FOR MILL SITE.

The quantity of land embraced in a mill-site claim can not exceed 5 acres and must be nonmineral in character.

Silver Peak Mines v. Valcalda, 79 Fed. 886, p. 890.

Page, In re, 1 L. D. 614.

Hecla Consol. Min. Co., In re, 14 L. D. 11, p. 12.

Yankee Mill Site, In re, 37 L. D. 674, p. 675.

Hoggin, In re, 2 L. D. 755.

15. NUMBER OF MILL SITES.

Ordinarily one mill site affords abundant facilities for the promotion of operations upon a single body of lode claims, and if more than one mill site is applied for in connection with a group of lode claims, a sufficient and satisfactory reason therefor must be shown, and this section does not contemplate that a mill site may be patented for each of a group of contiguous lode claims held and worked in common.

Hard Cash and Other Mill Site Claims, In re, 34 L. D. 325, p. 327.

See *Alaska Copper Co.*, In re, 32 L. D. 128, p. 130.

Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 150.

A separate mill site can not be regarded or allowed as complementary to each of several lode locations.

Alaska Copper Co., In re, 32 L. D. 128, p. 130.

Under this section an application for a patent for a lode claim may embrace more than one mill site or tract of land for milling purposes, provided all of such tracts combined keep within the restriction of 5 acres of nonmineral land.

Hoggin, In re, 2 L. D. 755, p. 756.

16. PERFORMANCE OF STATUTORY REQUIREMENTS—REPRESENTATION WORK.

No mill-site entries should be allowed unless it is shown that the conditions of the law have been complied with, and this may be shown by the field notes of the deputy surveyor.

Hudson Min. Co., In re, 14 L. D. 544.

This section contains in terms no requirement of an expenditure in labor or improvements, but the nature of the use or occupation is prescribed, and the character of the utilization requisite for either of such specified purposes is by necessary implication made manifest.

Alaska Copper Co., In re, 32 L. D. 128, p. 130.

The expenditure of \$500 upon a mill site is not a condition precedent to obtaining a patent therefor when the applicant is also the proprietor of a lode, and when the mill site is located in connection with the lode, as it is only required that it shall be used or occupied by such proprietor for mining or milling purposes.

Alta Mill Site, In re, 8 L. D. 195, p. 196.

D. ADVERSE CLAIMS.

1. MILL SITE PROTECTED BY ADVERSE CLAIM.
2. CONTEST WITH AGRICULTURAL CLAIMANT—COMPLIANCE WITH LOCAL LAWS.
3. CONTEST WITH TOWN-SITE CLAIMANT.

1. MILL SITE PROTECTED BY ADVERSE CLAIM.

A person claiming a mill site wholly or partly embraced in an application for patent by another person, can protect his mill site only by filing an adverse claim.

James, In re, 9 C. L. O. 71.

See *Bodie Tunnel & Min. Co. v. Bechtel Consol. Min. Co.*, 1 L. D. 584.

A mill-site claim is a proper subject for adverse proceedings, and courts will entertain adverse suits involving mill-site conflicts with mining locations.

Helena, etc., Co. v. Dailey, 36 L. D. 144, p. 147.

See *Durgan v. Redding*, 103 Fed. 914.

Bay State Gold Min. Co. v. Trevillion, 10 L. D. 194.

Cleary v. Skiffich, 28 Colo. 362.

Shafer v. Constans, 3 Mont. 369.

In the absence of an adverse claim on application covering a patent for a lode claim and contiguous mill site the patent may be issued, though there has been no proof of posting the required notice on the mill-site portion of the claim.

New York Lode & Mill Site Claim, In re, 5 L. D. 513.

See *Buena Vista Lode*, In re, 6 L. D. 646.

Silver Star Mill Site, In re, 25 L. D. 165, p. 166.

The rule that a preemptor, who, in the presence of an adverse claim, elects to make final proof, must abide the result thereof and submit to an order of cancellation in the event that his proof fails to show compliance with the law applies to a mining location.

Sierra Grande Min. Co. v. Crawford, 11 L. D. 338, p. 342.

2. CONTEST WITH AGRICULTURAL CLAIMANT—COMPLIANCE WITH LOCAL LAWS.

A mill-site claimant, under local laws in force at the date of the location of such mill site, must produce a certified copy of such local laws and a complete abstract of title, and show a full compliance with all local laws and customs relating to mill sites, as against an agricultural applicant.

Newark Mill & Min. Co. v. Meinke, 3 C. L. O. 67, p. 68.

The location of a mill site and the building of a mill thereon may create such rights and equities as to exclude the land from subsequent homestead appropriation.

Adams v. Simmons, 16 L. D. 181, p. 182.

3. CONTEST WITH TOWN-SITE CLAIMANT.

A person seeking to have a mill site excluded from the entry of a town site must first establish a title to such mill site, and to do this he must show that it is nonmineral in character; and the burden of proof to show this fact is upon the party alleging it.

Rico Townsite, In re, 1 L. D. 556, p. 557.

E. MILL SITE WITHIN LIMITS OF RAILROAD GRANT—NO PATENT.

An application for patent for nonmineral land as a mill site must be rejected where such land is within the limits of a railroad grant.

Mongrain v. Northern Pac. R. Co., In re, 18 L. D. 105, p. 106.

See *Keystone Lode & Mill Site v. Nevada*, 15 L. D. 259.

F. CORPORATION'S RIGHT TO PATENT FOR MILL SITE.

A duly qualified corporation may obtain title to a mill site under this section.

Bay State Gold Min. Co. v. Trevillion, 10 L. D. 194, p. 195.

G. SURVEY OF MILL SITE—SUFFICIENCY.

The survey of a mill site need not be connected with a mineral monument if connection be shown with the lode claimed in conjunction therewith.

McCarthy, In re, 14 L. D. 105, p. 108.

See *Emperor Wilhelm Lode, In re*, 5 L. D. 685.

Alta Mill Site, In re, 8 L. D. 195.

McCarthy, In re, 14 L. D. 294.

SECTION 2338, REVISED STATUTES.

As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

Same as section 5, act of July 26, 1866 (14 Stat. 251), p. 632.

A. PURPOSE OF SECTION.

1. STATE LAWS FOR WORKING MINES.
2. MINING EASEMENTS.

1. STATE LAWS FOR WORKING MINES.

This section permits any State or Territory to provide rules for working mines and for their complete development in the absence of necessary legislation by Congress.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 509.

Butte City Water Co. v. Baker, 196 U. S. 119, p. 123.

This section provides that in the absence of necessary legislation by Congress a State legislature may provide rules for working mines involving easements, drainage, and other necessary means to their complete development.

Calhoun Gold Min. Co., v. Ajax Gold Min. Co., 27 Colo. 1, p. 26.

2. MINING EASEMENTS.

A State may enact such laws for mining easements as under the construction of State courts might grant tunnel rights.

Baillie v. Larson, 138 Fed. 177, p. 178.

By this section easements for working mines, drainage, etc., are excluded from the purview of the mining statute, leaving these matters for state regulation.

Jacob v. Day, 111 Cal. 571, p. 576.

The reservation of an easement for the proper working of a mining claim must be inserted in a patent where it is necessary to protect any such easement.

Hendricks, In re, Sickels' Min. L. & D. 464, p. 465.

An easement for a tail race essential in carrying off water and débris from the operation of a hydraulic mine is not an easement within the contemplation of this section.

Jacob v. Day, 111 Cal. 571, p. 578.

SECTION 2339, REVISED STATUTES.

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

See 28 Stat. 635; 2 Supp. 367; 30 Stat. 11, p. 36.

Same as section 9 of the act of July 26, 1866 (14 Stat. 251, p. 263), p. 633.

A. CONSTRUCTION AND APPLICATION OF SECTION.

B. EASEMENTS GRANTED AND PROTECTED, p. 612.

C. WATER RIGHTS—LOCAL LAWS AND CUSTOMS, p. 616.

D. USES OF WATER CONTEMPLATED, p. 619.

E. RIPARIAN RIGHTS—APPLICATION TO PUBLIC LANDS, p. 619.

F. ABANDONMENT OR FORFEITURE OF WATER RIGHTS, p. 620.

G. WATER RIGHTS NOT SUBJECT TO PATENT, p. 621.

H. ADVERSE CLAIMS—WATER RIGHTS, p. 621.

I. FEDERAL COURTS—JURISDICTION, p. 621.

A. CONSTRUCTION AND APPLICATION OF SECTION.

1. PURPOSE AND APPLICATION.

2. GRANT OF WATER RIGHTS.

3. RIGHT TO APPROPRIATE WATER.

4. EXTENT OF RIGHT OF APPROPRIATION OF WATER.

5. WHAT CONSTITUTES APPROPRIATION OF WATER.

6. PRESUMPTION AS TO APPROPRIATION OF WATER.

1. PURPOSE AND APPLICATION.

There are some verbal changes in the section of the act of 1866 (14 Stat. 251) as reenacted in the Revised Statutes, but none affecting its substance and meaning.

Jennison v. Kirk, 98 U. S. 453, p. 456.

Miocene Ditch Co. v. Jacobsen, 2 Alaska 567, p. 573.

The object of this section was to give the sanction of the Government to possessory rights which had previously rested solely upon the local customs, laws, and decisions, and to prevent such rights being lost upon the sale of the land.

Jennison v. Kirk, 98 U. S. 453, p. 456.

Kern River Co., In re, 38 L. D. 302, p. 309.

Miocene Ditch Co. v. Jacobsen, 2 Alaska 567, p. 573.

See Isaacs v. Barber, 10 Wash. 124, p. 130.

This section is to be read in connection with other provisions of the mining statutes and in the light of matters of public history relating to the mineral lands of the United States.

Jennison v. Kirk, 98 U. S. 453, p. 457.

This section is rather a voluntary recognition of a preexisting right of possession constituting a valid claim to its continued use than the establishment of a new right.

Broder v. Water Co., 101 U. S. 274, p. 276.

Mohl v. Lamar Canal Co., 128 Fed. 776, p. 779.

Hoge v. Eaton, 135 Fed. 411, p. 414.

See *Eaton v. Hoge*, 141 Fed. 64.

Van Dyke v. Midnight Sun Min., etc., Co., 177 Fed. 85, p. 89.

Atchison v. Peterson, 87 U. S. 507.

Basey v. Gallagher, 87 U. S. 670.

Forbes v. Gracey, 94 U. S. 762.

Jennison v. Kirk, 98 U. S. 453.

The act of 1866 (14 Stat. 251) recognized but did not create the water rights and the right to the use of water for mining and other purposes therein mentioned.

Jones v. Adams, 19 Nev. 78, p. 88.

Carson v. Gentner, 33 Ore. 512, p. 519.

Isaacs v. Barber, 10 Wash. 124, p. 130.

Willey v. Decker, 11 Wyo. 496, p. 521.

See *Reno Smelting, etc., Works v. Stevenson*, 20 Nev. 269, p. 275.

United States v. Rio Grande, etc., Irrig. Co., 174 U. S. 690.

Neither this nor the succeeding section contemplates the reservation of land for the purpose of constructing ditches or reservoirs.

Huerfano Valley Ditch & Reservoir Co., In re, 10 L. D. 171, p. 172.

2. GRANT OF WATER RIGHTS.

This section is not only found in the body of the mining acts passed by Congress and classified therewith by statute, as well as by courts and law writers, but next to the right to mine on the public domain it grants to miners the most valuable incident thereto, the right to use the public waters in mining, which is the very essence of the mineral laws, without which mining could not be made profitable.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 325.

While this and the succeeding section protect vested water rights, yet it can neither grant nor protect a right appurtenant to that in connection with which the water was to be beneficially used; and while a vested right to the use of water for milling purposes carries with it the right of way for a ditch through which to divert water, yet it does not carry with it as an appurtenance a right to the land on which a mill is constructed.

Cleary v. Skiffich, 28 Colo. 362, p. 373.

The right to the use of water for mining or other purposes, as permitted by this section, is not unrestricted, but it must be exercised within reasonable limits.

Rio Grande Western R. Co. v. Telluride Power, etc., Co., 16 Utah 125, p. 137.

See *Basey v. Gallagher*, 87 U. S. 670.

3. RIGHT TO APPROPRIATE WATER.

Proprietors have the right to appropriate water of a stream and convey it for mining purposes to points where it can not be restored to the stream.

Atchison v. Peterson, 87 U. S. 507.

Clark v. Allaman, 71 Kan. 206, p. 240.

The doctrine of appropriation under this section applies only to public lands and waters of the United States.

Winters v. United States, 143 Fed. 740, p. 747.

See *United States v. Conrad Investment Co.*, 156 Fed. 123, p. 126.

Conrad Investment Co. v. United States, 161 Fed. 829.

An appropriation of land for the use of water must be made under this section and not under section 2337.

Cyprus Mill Site, In re, 6 L. D. 706, p. 709.

The right given by this section to appropriate water for mining and other domestic purposes includes the right to do that which is reasonably necessary to effectuate the diversion by the construction of a dam or other means of turning the water from its natural channel.

United States v. Conrad Investment Co., 156 Fed. 123, p. 128.

Affirmed in Conrad Investment Co. v. United States, 161 Fed. 829.

A person locating on a mining stream is entitled to a reasonable and proper use of the channel and water, and equity will not restrain mining operations on the ground that some sand and tailings incident to such operations happen to be washed on the land of the lower proprietor.

Carson v. Hayes, 39 Oreg. 97, p. 104.

See Atchison v. Peterson, 87 U. S. 507.

McCauley v. McKeig, 8 Mont. 389.

The Government has, by the provisions of this and the following sections, recognized the rights of appropriating water and taking the same from its natural channel.

Lone Tree Ditch Co. v. Cyclone Ditch Co., 15 S. Dak. 519, p. 525.

Stenger v. Tharp, 17 S. Dak. 13, p. 20.

4. EXTENT OF RIGHT OF APPROPRIATION OF WATER.

By this section Congress did not intend to release its control over the navigable streams of mining districts, and permit the appropriation of waters so as to destroy their navigability, but it intended to permit the appropriation of waters of streams not navigable in the mining regions whose waters could be so appropriated for mining and other purposes, without serious interference with the navigability of the streams into which those waters flow, and Congress, by this section, only intended to give its assent to any system, though in contravention to the common-law rule, which permitted the appropriation of the waters for such purposes.

United States v. Rio Grande, etc., Irrig. Co., 174 U. S. 690, p. 706.

The rights of claimants, under this section, as to the use of water in mining and other purposes are in nowise dependent upon the act of March 3, 1891 (26 Stat. 1095, p. 1101), or upon the approval of the maps contemplated by that act.

Lincoln County Water Supply & Land Co. v. Big Sandy Reservoir Co., 32 L. D. 463, p. 464.

Santa Fe, etc., R. Co., In re, 29 L. D. 213.

A mining company which has lawfully appropriated the waters of a stream for mining purposes may enjoin another mining company from sinking a shaft for the purpose of developing its own claim, where such shaft will or does in fact cut off and divert the waters of such stream.

Copper King v. Wabash Min. Co., 114 Fed. 991, p. 993.

The law applicable to the appropriation of surface streams and the vested rights protected by this section have no application to percolating waters arising in the land of an owner and carried through artificial drains constructed by him for the purpose of improving his property, or for his own convenience.

Crescent Min. Co. v. Silver King Min. Co., 17 Utah 444, p. 456.

See Willow Creek Irrig. Co. v. Michaelson, 21 Utah 248, p. 256.

Water percolating from a mining claim, after passing into an underground artificial tunnel used in developing a mine, is not subject to appropriation by another while it remains in the tunnel upon the owner's land; but if allowed to flow out of such tunnel and away from the appropriator's land into a lake upon the public land the water is then subject to appropriation, but the appropriator would not thereby acquire an ease-

ment in the mining claim or a prescriptive right to have a continuous flow of the water from the tunnel into the lake.

Crescent Mining Co. v. Silver King Min. Co., 17 Utah 444, p. 448.
See Willow Creek Irrig. Co. v. Michaelson, 21 Utah 248, p. 256.

This section does not confer upon a person the right to enter upon the lands in the possession of another for the purpose of securing water thereon, but simply provides for protecting such rights in the use of water as may have vested and accrued by priority of possession and are recognized and acknowledged by local customs, laws, and decisions.

Taylor v. Abbott, 103 Cal. 421, p. 423.
McGuire v. Brown, 106 Cal. 660, p. 668.

5. WHAT CONSTITUTES APPROPRIATION OF WATER.

To constitute a valid appropriation of water under this section three elements must exist: (1) An intent to apply the water to some beneficial use existing or contemplated; (2) a diversion from the natural channel by means of a ditch, canal, or other method; and (3) an application thereof to some useful industry.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 333.
See Miocene Ditch Co. v. Champion Min., etc., Co., 3 Alaska 572, p. 581.
Simmons v. Winters, 21 Oreg. 35.
Oviatt v. Big Four Min. Co., 39 Oreg. 118, p. 126.

6. PRESUMPTION AS TO APPROPRIATION OF WATER.

The locator of a placer claim is presumed to intend to appropriate the water flowing in the channel of a river through such location, as well as the channel, the banks, and all territory embraced within the location, to the business of mining.

Schwab v. Bean, 86 Fed. 41, p. 43.
 Denied in *Snyder v. Colorado Gold Dredging Co.*, 181 Fed. 62.

A placer location appropriates all waters covered by it in so far as they are necessary for working the claim.

Schwab v. Bean, 86 Fed. 41, p. 42.
Madigan v. Kougarok Min. Co., 3 Alaska 63, p. 69.

In a controversy over a ditch for mining purposes it may be assumed that the water was appropriated and conducted by means of ditches between the termini thereof, in accordance with the custom of the district and the laws of the State.

Gest v. Packwood, 34 Fed. 368, p. 371.

B. EASEMENTS GRANTED AND PROTECTED.

1. RIGHTS OF WAY FOR CANALS AND DITCHES.
2. WATER RIGHTS DETERMINED BY PRIORITY OF APPROPRIATION.
3. VESTED WATER RIGHTS PROTECTED.
4. WATER RIGHTS PROTECTED AGAINST OTHER CLAIMANTS.
5. TIME OF ACQUIRING WATER RIGHTS—PROTECTION.
6. NATURE OF WATER RIGHTS PROTECTED.
7. CHANGE IN WATER RIGHTS NOT PERMITTED.

1. RIGHTS OF WAY FOR CANALS AND DITCHES.

The act of Congress of July 26, 1866 (14 Stat. 251, sec. 9), was an unequivocal grant of the right of way for a canal to convey water for mining purposes, and confirmed to the owners of such canal all preexisting rights which the Government had by its policy

theretofore recognized; and accordingly a person taking title to land subsequent to the enactment of this statute took the title subject to any existing right of way.

Broder v. Water Co., 101 U. S. 274, p. 275.

Lincoln County Water Supply & Land Co. v. Big Sandy Reservoir Co., 32 L. D. 463, p. 464.

Osgood v. El Dorado Water, etc., Min. Co., 56 Cal. 571, p. 581.

Coffin v. Left Hand Ditch Co., 6 Colo. 443, p. 447.

Carson v. Gentner, 33 Oreg. 512, p. 519.

Congress, by this section, granted the right of way over the public lands for ditches used in appropriating and applying waters for beneficial uses, including mining.

Snyder v. Colorado Gold Dredging Co., 181 Fed. 62, p. 65.

This is merely a recognition by the United States of water rights acquired under usage, customs, and laws of the State, and in addition recognizes the rights of persons acquiring such rights to go across the public lands.

Palmer, In re, 38 L. D. 294, p. 309.

This and the next succeeding section provides that the right of way for the construction of ditches and canals for the use of water for mining and other purposes are protected, and all patents granted and all preemptions or homesteads allowed shall be subject to any vested or accrued water rights, or rights to ditches or reservoirs used in connection with such rights.

Boglino v. Giorgetta, 20 Colo. App. 338, p. 344.

This section vests in the person the right of way for a ditch when he accepts the offer of donation therein made by the Government by constructing the ditch.

Welch v. Garrett, 5 Idaho 639, p. 641.

See McDougal v. Lame, 39 Oreg. 212, p. 216.

A right of way for a flume to conduct water for mining purposes is an easement fully protected by this section of the statute.

Rockwell v. Graham, 9 Colo. 36, p. 37.

Congress, in the early history of the western country, enacted this and section 2340 R. S., recognizing and granting rights of way across public lands for ditches and canals used for mining and other purposes and required subsequent patents to be subject to such easements.

Green v. Wilhite, 14 Idaho 238, p. 246.

Under this and the succeeding section, no one can acquire as against the Government a vested easement in and to the public lands for a reservoir site until the actual completion of the reservoir, so that the water thereby impounded can be applied to the beneficial uses contemplated by the irrigation system of which it forms a part.

United States v. Rickey Land & Cattle Co., 164 Fed. 496, p. 499.

Bear Lake, etc., Irrig. Co. v. Garland, 164 U. S. 1, p. 16.

By this section ditches for mining purposes are declared to be real property, and the laws relative to the sale and transfer of real estate apply to the transfer of such ditches.

Gest v. Packwood, 34 Fed. 368, p. 371.

This section does not authorize the construction of a right of way across reserved lands of the United States, but is limited to the public lands.

Kern River Co., In re, 38 L. D. 302, p. 309.

Under this section a discoverer of percolating waters on public lands by digging a well acquires an easement in the land for the maintenance of such well and the right to the water as against a subsequent locator of the land.

Sullivan v. Northern Spy Min. Co. 11 Utah 438, p. 442.

Brosnan v. Harris, 39 Oreg. 148, p. 151.

See Deadwood Central R. Co. v. Barker, 14 S. Dak. 558, p. 571.

Crescent Min. Co. v. Silver King Min. Co., 17 Utah 444, p. 456.

2. WATER RIGHTS DETERMINED BY PRIORITY OF APPROPRIATION.

The first appropriator of any mine, or of water in the streams on public lands for mining purposes, has a better right than others to work the mines or use the water, and he is regarded, except as against the Government, as the source of all title in all controversies relating to the property.

Atchison v. Peterson, 87 U. S. 507, p. 510.

Basey v. Gallagher, 87 U. S. 670, p. 681.

McFarland v. Alaska Perseverance Min. Co., 3 *Alaska* 306, p. 335.

See *Revenue Min. Co. v. Balderston*, 2 *Alaska* 363.

Miocene Ditch Co. v. Jacobsen, 2 *Alaska* 567.

Madigan v. Kougarok Min. Co., 3 *Alaska* 63.

Miocene Ditch Co. v. Champion Min., etc., Co., 3 *Alaska* 572, p. 584.

The rule is that the right to running waters on the public lands for mining purposes may be acquired by prior appropriation, as against parties not having the title of the Government; and the right exercised within reasonable limits will be protected by the courts.

Basey v. Gallagher, 87 U. S. 670, p. 683.

Howell v. Johnson, 89 Fed. 556, p. 558.

Osgood v. El Dorado Water, etc., Min. Co., 56 Cal. 571.

McFarland v. Alaska Perseverance Min. Co., 3 *Alaska* 306, p. 334.

Barnes v. Sabron, 10 Nev. 217, p. 230.

To carry water to mining localities when they were not on the bank of a stream or lake became an important and necessary business in mining operations, and the first appropriator of water to be conveyed to such localities for mining or other beneficial purposes was recognized as having to the extent of actual use the better right.

Jennison v. Kirk, 98 U. S. 453, p. 458.

McFarland v. Alaska Perseverance Min. Co., 3 *Alaska* 306, p. 330.

Hill v. Lenormand, 2 *Ariz.* 354, p. 358.

See *Jacob v. Day*, 111 Cal. 571, p. 578.

In order to establish any rights under this section it is necessary to prove the priority of possession.

Telluride Power, etc., Co. v. Rio Grande, etc., R. Co., 175 U. S. 639, p. 645.

Butte City Water Co. v. Baker, 196 U. S. 119, p. 123.

Creed & Cripple Creek, etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 358.

Where parties contesting the right to appropriate water, both based upon placer locations, the claim of the one first making the appropriation is superior.

Schwab v. Bean, 86 Fed. 41, p. 44.

See *Snyder v. Colorado Gold Dredging Co.*, 181 Fed. 62, p. 69.

Thorndyke v. Alaska Perseverance Min. Co., 164 Fed. 657.

Madigan v. Kougarok Min. Co., 3 *Alaska* 63, p. 70.

The rights of parties must be determined by priority of location as between water rights for mining or other purposes and preemption rights.

Driskill v. Rebbe, 22 S. Dak. 242, p. 252.

See *Scott v. Toomey*, 8 S. Dak. 639.

The right acquired by prior appropriation of water on the public domain is held to be founded in grant from the United States Government as owner of the land and water.

Willey v. Decker, 11 Wyo. 496, p. 515.

See *Coffin v. Left Hand Ditch Co.*, Colo. 443.

Smith v. Deniff, 24 Mont. 20.

Jones v. Adams, 17 Nev. 78.

Reno Smelting, etc., Works v. Stevenson, 20 Nev. 269.

Moyer v. Preston, 6 Wyo. 308.

By this section all rights to the use of water acquired by prior appropriation for mining or other purposes were confirmed.

Hill v. Lenormand, 2 *Ariz.* 354, p. 357.

An increased appropriation of water for operating a placer mining claim, which is initiated and maintained by an unlawful trespass upon the lands of another in the nature of an unauthorized enlargement of an existing ditch, creates no right as against the owner of the property on which such trespass is committed.

Snyder v. Colorado Gold Dredging Co., 181 Fed. 62, p. 70.

The owner of a mining claim and the owner of a water right enjoy their respective properties from the dates of their appropriations, the first in time being the first in right; but where both rights can be enjoyed without interference with, or material impairment of each other, such enjoyment is permitted.

Jennison v. Kirk, 98 U. S. 453, p. 461.

See Barnes v. Sabron, 10 Nev. 217, p. 230.

Water rights are acquired by priority of appropriation and are governed by local customs and laws, and are protected by the provisions of this and the following section but they are not patentable as water rights or rights of way.

Lennig, In re, 5 L. D. 190, p. 191.

See Broder v. Water Co., 101 U. S. 274.

The right to the use of water for mining purposes is determined under this section by priority of possession, and when rights to the use of water for such purposes have accrued and are recognized by the local customs and laws, the owner of such rights is protected.

Telluride Power, etc., Co. v. Rio Grande, etc., R. Co., 175 U. S. 639, p. 645.

3. VESTED WATER RIGHTS PROTECTED.

This section protects priority of possession in rights to the use of water for mining purposes where such rights have vested and are recognized and acknowledged by the local customs, laws, and decisions.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 587.

Noland v. Coon, 1 Alaska 36, p. 38.

Madigan v. Kougarok Min. Co., 3 Alaska 63, p. 70.

Kern River Co., In re, 38 L. D. 302, p. 304.

Lux v. Haggin, 69 Cal. 225.

Jacob v. Lorenz, 98 Cal. 332, p. 335.

McGuire v. Brown, 106 Cal. 660, p. 666.

Smith v. Hawkins, 110 Cal. 122, p. 125.

Brosnan v. Harris, 39 Oreg. 148, p. 151.

Parkersville District v. Wattier, 48 Oreg. 332, p. 338.

These sections protect a person who has acquired a right to the water of a stream flowing through the public lands by prior appropriation in accordance with the laws of the State where the appropriation was made as against subsequent appropriators though in a different State.

Howell v. Johnson, 89 Fed. 556.

Morris v. Bean, 123 Fed. 618, p. 619.

Anderson v. Baerman, 140 Fed. 14, p. 20.

Morris v. Bean, 146 Fed. 423.

Bean v. Morris, 159 Fed. 651.

Vested rights to the use of water for mining and other purposes are protected by this section and such rights are not lost by nonuser alone, short of the period for the limitation of action to recover the real property.

Dodge v. Marden, 7 Oreg. 456, pp. 457, 458.

See Lewis v. McClure, 9 Oreg. 273, p. 274.

Where the waters of a stream are appropriated in connection with a placer mining claim the owner of the claim is entitled to have them continue without diminution subject to the reasonable use of riparian owners higher up the stream.

Schwab v. Bean, 86 Fed. 41, p. 43.

See Snyder v. Colorado Gold Dredging Co., 181 Fed. 62, p. 69.

4. WATER RIGHTS PROTECTED AGAINST OTHER CLAIMANTS.

It is only vested and accrued rights to the use of water which are reserved by the operation of this and the following section that without these provisions would vest in the homestead claimant.

McGuire v. Brown, 106 Cal. 660, p. 667.

This section amended the original act of July 26, 1866 (14 Stat. 251), and made the homestead subject to vested and accrued water rights used for mining and other purposes.

De Wolfskill v. Smith, 5 Cal. App. 175, p. 182.

The purchaser of a mine from a patentee takes the title to such mine subject to any vested water rights or ditches existing prior to the patent for such mine.

Jacob v. Day, 111 Cal. 571, p. 579.

5. TIME OF ACQUIRING WATER RIGHTS—PROTECTION.

The rights of miners who have worked and developed mines, and who have constructed canals and ditches to be used in mining operations in regions where artificial water is a necessity, are rights which the Government recognized and encouraged, and which it was bound to protect before the passage of the act of 1866.

Broder v. Water Co., 101 U. S. 274, p. 276.

Mohl v. Lamar Canal Co., 128 Fed. 776, p. 779.

United States v. Rio Grande Irrig. Co., 174 U. S. 690.

Van Dyke v. Midnight Sun Min., etc., Co., 177 Fed. 85, p. 89.

Isaacs v. Barber, 10 Wash. 124, p. 131.

The protection afforded by this and the following section apply to water rights acquired after the enactment of the statute of July 26, 1866 (14 Stat. 251), as well as those vested and accrued prior to the passage of the act.

Jacob v. Lorenz, 98 Cal. 332, p. 335.

6. NATURE OF WATER RIGHTS PROTECTED.

This and the following section recognize and protect vested water rights used for mining purposes, but they do not give a right or easement to deposit mining débris on the lands of another.

Helena etc., Smelting etc., Co., In re, 48 Fed. 609, p. 610.

This section makes a clear distinction between the discharge of superfluous water encountered in quartz and drift mines and the water conveyed through ditches and flumes for the purpose of operating a hydraulic mine, and vested rights in the latter are protected by this section.

Jacob v. Day, 111 Cal. 571, p. 577.

7. CHANGE IN WATER RIGHTS NOT PERMITTED.

This and the next succeeding section fully protect vested water rights and the right to maintain a dam in a stream as originally maintained, but give them no right to construct and maintain a new dam in such manner as to place a greater servitude than was originally borne by the lands of the riparian owner.

Greeley Irrig. Co. v. Von Trotha, 48 Colo. 12, p. 18.

C. WATER RIGHTS—LOCAL LAWS AND CUSTOMS.

1. STATE LAWS AFFECTING WATER RIGHTS.
2. LOCAL CUSTOMS AND REGULATIONS OF MINERS.
3. WATER RIGHT LAWS IN FORCE IN ALASKA.

1. STATE LAWS AFFECTING WATER RIGHTS.

A State by its statute can not take from a private individual the water rights granted him by the General Government.

Howell v. Johnson, 89 Fed. 556, p. 559.

The power of Congress over nonnavigable streams flowing through the public lands is superior to that of the local State, as such streams are a part of the public domain, and Congress may grant the use of such streams for mining or other purposes separate from the land.

Howell v. Johnson, 89 Fed. 556, p. 557.

See Morris v. Bean, 123 Fed. 618.

Morris v. Bean, 146 Fed. 423.

Bean v. Morris, 159 Fed. 651, p. 654.

The effect of this statute is to recognize, at least as to the United States, the validity of the local customs, laws, and decisions of courts in respect to the appropriation of water.

United States v. Rio Grande Irrig. Co., 174 U. S. 690, p. 704.

Gutierrez v. Albuquerque Land, etc., Co., 188 U. S. 545, p. 553.

The local customs and laws sanctioned and approved by the act of 1866, enlarged the common law rule as to uses which could be made of water, but they had no application as to the granting of such rights by the General Government or a State Government, and while a person who diverts water from a natural stream for mining purposes may so use it as long as he conforms to the law, he has no contract with or grant from either the Federal or State Government so to do.

Mohl v. Lamar Canal Co., 128 Fed. 776, p. 779.

See Lamar Canal Co. v. Amity Land & Irrig. Co., 26 Colo. 370.

Hoge v. Eaton, 135 Fed. 411, p. 414.

Eaton v. Hoge, 141 Fed. 64.

Under this section, as well as section 2340 R. S., the question to be determined is what appropriation is required by the usage, customs, laws, and decisions of the courts in order to bring it within the provisions of these sections.

Deadwood Central R. Co. v. Barker, 14 S. Dak. 558, p. 573.

2. LOCAL CUSTOMS AND REGULATIONS OF MINERS.

From 1848 to 1866 the regulations and customs of miners, as enforced and molded by the courts and sanctioned by State legislation, constituted the law governing property in mines and in water on the public mineral lands.

Jennison v. Kirk, 98 U. S. 453, p. 458.

See Gillis v. Downey, 85 Fed. 483, p. 486.

Northmore v. Simmons, 97 Fed. 386, p. 389.

The act of Congress recognizes as valid the customary law with respect to the use of water which had grown up among the occupants of the public land, and that such law may be shown by evidence of local customs, the legislation of the State or Territory, or the decisions of the court.

Bacey v. Gallagher, 87 U. S. 670, p. 684.

Howell v. Johnson, 89 Fed. 556, p. 558.

Issacs v. Barber, 10 Wash. 124, p. 130.

The water rights protected by this section are those recognized and acknowledged by local customs, laws, and decisions in the localities where such rights are claimed.

Helena, etc. Smelting, etc. Co., In re, 48 Fed. 609, p. 611.

It is not sufficient to prove simply the priority of possession to satisfy the provisions of this section, but it is still necessary to prove that the possessory right to the use of water was recognized and acknowledged by the local customs, laws, and decisions.

Telluride Power, etc., Co. v. Rio Grande, etc., R. Co., 175 U. S. 639, p. 645.

Local customs, regulations, and laws are paramount in determining the right and use of water from public streams, and this section is in recognition of this right without intending to create any new or different right than those existing at the time of its adoption.

United States v. Conrad Investment Co., 156 Fed. 123, p. 127.

Broder v. Water Co., 101 U. S. 274.

See Mohl v. Lamar Canal Co., 128 Fed. 776.

Affirmed in Conrad Investment Co. v. United States, 161 Fed. 829.

In the arid regions of the Western States and Territories it has been the custom of the people to divert from their natural channels the waters of the streams upon the public lands and appropriate the same for the purpose of mining and other useful and beneficial uses, and these customs have been tacitly assented to by the Federal Government and encouraged by the express legislative policy of the different States, and are recognized as if they were rights which had been vested by the most distinct expression of the will of the lawmakers.

Van Dyke v. Midnight Sun Min., etc., Co., 177 Fed. 85, p. 90.

Irwin v. Phillips, 5 Cal. 140.

The right to the use of water for mining or other purposes can not be made to depend upon proof of a local custom to that effect in the specific locality where the right is claimed, but it is sufficient if such custom is established with reference to the State as a whole.

Maffet v. Quine, 93 Fed. 347, p. 348.

See Maffet v. Quine, 95 Fed. 199.

Numerous regulations among miners were adopted or assumed to exist from their obvious justness for the security of ditches and flumes, and the protection of rights to water, not only between different appropriators, but between them and the holders of mining claims, and these regulations received the sanction of State courts in local controversies, and properties to the value of many millions rested upon these miners' regulations.

Jennison v. Kirk, 98 U. S. 453, p. 453.

Price v. McIntosh, 1 Alaska 286, p. 292.

Jones v. Adams, 19 Nev. 78, p. 87.

There is little difference between customs of miners and mining laws up to the point where the miner seeks a patent, and the mining statutes contain no extra conditions to the possessory right, but only require discovery and marking the claim upon the ground.

Upton v. Larkin, 7 Mont. 449, p. 456.

See Jennison v. Kirk, 98 U. S. 453.

3. WATER-RIGHT LAWS IN FORCE IN ALASKA.

This section and the corresponding parts of the act of July 26, 1866 (14 Stat. 251) are parts of the general mining laws of the United States and are in force in Alaska.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 323.

Madigan v. Kougarok Min. Co., 3 Alaska 63, p. 69.

Denying Ketchikan Co. v. Citizens Co., 2 Alaska 120.

This and the following section are part of the general land laws of the United States, and are not in operation in Alaska except in so far as they relate to mining claims and the rights incident thereto, and to that extent only are they made applicable to public lands in Alaska by section 8 of the act of May 17, 1884 (23 Stat. 24).

Brady, In re, 26 L. D. 305, p. 309.

The legislation contained in the act of March 3, 1891 (26 Stat. 1095), relating to the public lands generally, affords no warrant for any extension of the application of this and the following section to public lands in Alaska, and it was not intended to extend

the water rights provided for in these sections to the acquisition of land in Alaska "for the purpose of trade and manufacturers."

Brady, *In re*, 26 L. D. 305, p. 309.

D. USES OF WATER CONTEMPLATED.

1. BENEFICIAL USE SUFFICIENT.

2. WATER RIGHTS LIMITED BY USE.

1. BENEFICIAL USE SUFFICIENT.

The right to the possession and use of water for mining purposes, under this section, is not dependent on proof that it is used for mining and milling purposes, but possession and appropriation of the water to a beneficial use is sufficient, and proof of use for domestic purposes is sufficient.

Silver Peak Mines v. Valcalda, 79 Fed. 886, p. 890.

Valcalda v. Silver Peak Mines, 86 Fed. 90, p. 93.

Every use of water for purposes of legitimate mining sanctioned by local custom and law is recognized as a right and protected as such, as well as the ditch by which the use of the water is made practicable, and this includes the use of water and the construction of a ditch to aid in carrying off the tailings, but a tail race from a hydraulic mine across unappropriated land is a vested right protected by this section.

Jacob v. Day, 111 Cal. 571, p. 576.

2. WATER RIGHTS LIMITED BY USE.

The right to water by prior appropriation is limited in every case, in quantity and quality, by the uses for which the appropriation is made, and a subsequent different use does not affect the right; the appropriation does not confer such an absolute right to the body of the water diverted that the owner can allow it, after its diversion, to run to waste and prevent others from using it for mining or other legitimate purposes; nor does it confer such a right that he can insist upon the flow of the water without deterioration in quality, where such deterioration neither defeats nor impairs the uses to which the water is applied.

Atchison v. Peterson, 87 U. S. 507, p. 514.

Basey v. Gallagher, 87 U. S. 670, p. 681.

E. RIPARIAN RIGHTS—APPLICATION TO PUBLIC LANDS.

The Government being the sole proprietor of all the public lands, there is no occasion of the application of the common-law doctrine of riparian proprietorship, but when riparian rights have once attached to a private owner they can not be taken away.

Atchison v. Peterson, 87 U. S. 507, p. 512.

Lone Tree Ditch Co. v. Cyclone Ditch Co., 15 S. Dak. 519, p. 526.

See *Lux v. Haggin*, 69 Cal. 255.

Hammond v. Rose, 11 Colo. 524, p. 526.

Drake v. Erhardt, 2 Idaho (716) 750.

Reno Smelting, etc., Reduction Works v. Stevenson, 20 Nev. 269.

Stenger v. Thorp, 17 S. Dak. 13, p. 22.

Driskill v. Rebbe, 22 S. Dak. 242, p. 252.

Moyer v. Preston, 6 Wyo. 308.

The doctrines of the common law as to the rights of riparian owners respecting the use of running waters are applied in a very limited extent to the necessities of miners on the mineral lands of the public domain; the rule in force is that the prior appropriation gives the better right to running waters both in quantity and quality as may be necessary for the uses to which the water is applied.

Atchison v. Peterson, 87 U. S. 507, p. 511.

Basey v. Gallagher, 87 U. S. 670, p. 681.

The common-law rule as to the rights of riparian owners does not apply to the use of water for mining purposes.

Jennison v. Kirk, 98 U. S. 453, p. 458.

Atchison v. Peterson, 87 U. S. 507, p. 511.

Jones v. Adams, 19 Nev. 78, p. 87.

Isaacs v. Barber, 10 Wash. 124, p. 130.

The locators of a placer mining claim in Alaska acquire no riparian rights in or to the waters of a natural stream, but they have the right to appropriate such of the unappropriated waters of the stream as are needed in and for the working of their mining claim.

Van Dyke v. Midnight Sun Min., etc., Co., 177 Fed. 85, p. 91.

F. ABANDONMENT OR FORFEITURE OF WATER RIGHTS.

Abandonment as applied to the doctrine of appropriation of water for mining purposes is an intentional relinquishment of a known right, and this intention must be ascertained from conduct and declarations.

Mallett v. Uncle Sam Min. Co., 1 Nev. 188, p. 204.

Oviatt v. Big Four Min. Co., 39 Oreg. 118, p. 122.

See *Wimer v. Simmons*, 27 Oreg. 1, p. 13.

The vested water rights for mining purposes may be extinguished or forfeited by abandonment by proof of acts showing an intent to surrender or forsake the right, but a mere bill of sale for three mining claims described as being on a certain creek and as creek claims is not sufficient evidence merely because such bill of sale does not expressly include the water rights.

Dodge v. Marden, 7 Oreg. 456, p. 458.

Oviatt v. Big Four Min. Co., 39 Oreg. 118, p. 122.

A patentee of a placer mining claim who fails to continue working it as a mine after it becomes unprofitable and to offer it for sale as a mill site, or for a manufacturing establishment, does not thereby lose the water right which he had as a miner.

Schwab v. Bean, 86 Fed. 41, p. 43.

See *Snyder v. Colorado Gold Dredging Co.*, 181 Fed. 62.

The rules of a mining district requiring a diligent and continuous prosecution of the location and development of mining claims to prevent a forfeiture or an abandonment of an appropriation of water from a natural watercourse is sufficiently complied with where the original appropriator at once commenced work on his mining claims and continued the same for four years, and where his grantee continued the work for the next succeeding four years and up to the time of the alleged forfeiture or abandonment by driving a tunnel 2,500 feet in length, making an upraise of 920 feet, building a 50-stamp mill, with building space for another, and constructing the necessary buildings for its large operations, cleaning out ditches, repairing flumes, excavating for and constructing pipe lines, and spending in these and other improvements on the group of mining claims about \$500,000.

Thorndyke v. Alaska Perseverance Min. Co., 164 Fed. 657, p. 664.

While the Land Department might, upon a satisfactory showing, be justified in approving an application filed under the act of March 3, 1891 (26 Stat. 1095, p. 1101), embracing the same property formerly used, and leave the question of forfeiture for nonuser for the courts, yet it is clearly beyond the power of the Land Department to declare a forfeiture of a right of way for the use of water in mining or other purposes under this section.

Lincoln County Water Supply & Land Co. v. Big Sandy Reservoir Co., 32 L. D. 463, p. 464.

G. WATER RIGHTS NOT SUBJECT TO PATENT.

This section shows that it was not the intention of Congress that a water right should be patented under mining laws.

Lennig, In re, 5 L. D. 190, p. 191.

See Broder v. Natoma Water Co., 101 U. S. 274.

Rights to the use of water for mining purposes are not only recognized, but provision is also made for their acquisition and protection, but this does not include a patent, as the possession and use constitute the foundation for these rights, and this section secures to a claimant, by virtue of possession and use, any rights acquired.

Lennig, In re, 13 C. L. O. 110.

Lennig, In re, 5 L. D. 190, p. 191.

An applicant will not be permitted to obtain a patent under the mineral laws for a water right under an application for a placer mining claim.

Pagosa Springs, In re, 1 L. D. 562.

Cheesman, In re, 2 L. D. 774.

Hale, In re, 3 L. D. 536.

Lennig, In re, 5 L. D. 190.

Miller Placer Claim, In re, 30 L. D. 225, p. 226.

H. ADVERSE CLAIMS—WATER RIGHTS.

The owner of a water right under this section is not compelled to adverse an application for a patent for a mining claim.

Creede & Cripple Creek, etc., Co. v. Uinta Tunnel, etc., Co., 196 U. S. 337, p. 359.

Where a patent is authorized to be issued to a party in possession of water rights for mining purposes and any contest arises as to such rights, the statute leaves such contest to the ordinary tribunals which are to determine the relative rights of the parties without reference to the construction of the statute, and these tribunals are guided by the laws, regulations, and customs of the mining districts in which the controversy arises.

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, p. 588.

I. FEDERAL COURTS—JURISDICTION.

The mere fact that in the process of litigation a construction of a mining statute of the United States may become necessary is not alone sufficient to justify a removal of the case from a State to a Federal court.

Gold Washing, etc., Co. v. Keyes, 96 U. S. 199.

The question as to who has acquired a priority of possession within the meaning of this section is not necessarily a Federal question but is one of fact upon which the decision of a State court is conclusive.

Telluride Power, etc., Co. v. Rio Grande, etc., R. Co., 175 U. S. 639, p. 645.

A suit to establish and enforce a right or easement to deposit mining débris on the lands of another can not be removed from a State to a Federal court on the ground that it involves a construction of sections 2339 and 2340 of the United States Revised Statutes.

Helena, etc., Smelting, etc., Co., In re, 48 Fed. 609, p. 610.

The ascertainment of what the water rights are under this section does not involve the construction of a Federal statute in such sense as to confer jurisdiction on a Federal court.

Helena, etc., Smelting, etc., Co., In re, 48 Fed. 609, p. 611.

See Trafton v. Nougues, 24 Fed. Cas. 123.

Los Angeles, etc., Mill. Co. v. Hoff, 48 Fed. 340.

SECTION 2340, REVISED STATUTES.

All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

Same as the middle part of section 17, act of July 9, 1870 (16 Stat. 217, p. 218), p. 671.

A. APPLICATION OF SECTION TO EXISTING AND SUBSEQUENT RIGHTS.

B. PATENTS SUBJECT TO WATER RIGHTS.

C. PATENTS BURDENED BY EASEMENTS.

D. DESTRUCTION OF VESTED WATER RIGHTS, p. 623.

E. NO RIGHTS AS AGAINST THE GOVERNMENT, p. 623.

A. APPLICATION OF SECTION TO EXISTING AND SUBSEQUENT RIGHTS.

Neither this nor the preceding section is limited in its application to ditches or canals that have been constructed, nor is it to be construed as excluding those that hereafter may be constructed, but Congress evidently referred to ditches and canals that might at any time be constructed upon the public domain.

Green v. Wilhite, 14 Idaho 238, p. 246.

B. PATENTS SUBJECT TO WATER RIGHTS.

This section is the same as section 17 of the amendatory act of July 9, 1870 (16 Stat. 217), and requires preemption or homestead patents to be subject to vested and accrued water rights for mining and other purposes.

Sturr v. Beck, 133 U. S. 541, p. 551.

McGuire v. Brown, 106 Cal. 660, p. 670.

Dodge v. Marden, 7 Oreg. 456, p. 458.

Parkersville District v. Wattier, 48 Oreg. 332, p. 338.

Driskill v. Rebbe, 22 S. Dak. 242, p. 252.

Willey v. Decker, 11 Wyo. 496, p. 520.

See Atchison v. Peterson, 87 U. S. 507.

Basey v. Gallagher, 87 U. S. 670.

All patents subsequently issued for public lands must be subject to any vested right to established ditches for beneficial uses of water.

Snyder v. Colorado Gold Dredging Co., 181 Fed. 62, p. 66.

Welch v. Garrett, 5 Idaho 639, p. 641.

C. PATENTS BURDENED BY EASEMENTS.

An appropriator of water is a licensee of the General Government so long as the land continues to be part of the public domain; but when patent is issued to an individual it is burdened by the easement granted by the United States and the patentee holds his rights against the land under an express grant, and the person holding rights by such appropriation differs from one who holds water rights by prescription.

Smith v. Hawkins, 110 Cal. 122, p. 125.

Oliver v. Agasee, 132 Cal. 297, p. 300.

See Jacob v. Day, 111 Cal. 571.

North Fork Water Co., v. Edwards, 121 Cal. 662.

Tuolumne Consol. Min. Co. v. Maier, 134 Cal. 583.

A patent issued for a mining claim is subject to the easements as provided by this section.

Oliver v. Agasse, 132 Cal. 297, p. 298.

This section protects a right of way for a flume used to conduct water for mining purposes.

Rockwell v. Graham, 9 Colo. 36, p. 37.

A patent for lands in the Columbia River district may be properly granted subject to any vested and accrued water rights for mining and other purposes and subject to the right of way for the construction of ditches and canals where such rights have accrued under the local laws.

Maffet v. Quine, 93 Fed. 347, p. 348.

See Maffet v. Quine, 95 Fed. 199.

D. DESTRUCTION OF VESTED WATER RIGHTS.

It seems that a subsequent locator of land may make improvements thereon, including the digging of a well to obtain water for mining or other purposes, although such well destroys previously vested water rights.

Sullivan v. Northern Spy Min. Co., 11 Utah 438, p. 443.

E. NO RIGHTS AS AGAINST THE GOVERNMENT.

Rights as against third persons can be acquired under this and the preceding section by priority of possession, and the Government will and does recognize such rights as between the parties, though as against the Government no right or title to the land, or right of way over or through it, or to the use of water from a well thereafter to be dug, vests, as against the Government, from the mere fact of possession unaccompanied by the performance of any labor.

Bear Lake Irrig. Co. v. Garland, 164 U. S. 1, p. 18.

See Sullivan v. Northern Spy Min. Co., 11 Utah 438.

SECTION 2341, REVISED STATUTES.

Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinna-
bar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of \$1.25 per acre, and in quantity not to exceed 160 acres; or they may avail themselves of the provisions of chapter 5 of this Title, relating to "Homesteads."

Same as section 10, act of July 26, 1866 (14 Stat. 251, p. 253), p. 634.

A. OBJECTS OF SECTION.

B. AGRICULTURAL AND MINERAL LANDS.

A. OBJECTS OF SECTION.

The object of this section was to give persons who had in good faith made agricultural settlements on public lands theretofore designated as mineral but subsequently determined to be agricultural a preference in entering the land as homesteads.

Caledonia Min. Co. v. Rowen, 2 L. D. 714, p. 716.

See Smith v. Stewart, Copp's Min. Dec. 133.

Carron v. Curtis, 5 C. L. O. 3.

This section provides for a particular class of persons and rights and gives a right of homestead entry to persons who had already occupied and improved a tract of land and who had no such right outside the provisions of this section.

Caledonia Min. Co. v. Rowen, 2 L. D. 714.

The provisions of this section protect the rights of actual settlers upon lands reserved as mineral but which have been used for agricultural purposes.

Caledonia Min. Co. v. Rowen, 2 L. D. 714.

Carron v. Curtis, Copp's Min. Lands 265.

B. AGRICULTURAL AND MINERAL LANDS.

1. NATURE AND ACQUISITION.
2. AGRICULTURAL ENTRIES PROTECTED.
3. HOMESTEAD ENTRIES—PROOF AS TO CHARACTER OF LAND.
4. AGRICULTURAL CLAIMANT—NO PATENT AFTER MINERAL DISCOVERY.
5. MINERAL IMPROVEMENTS—EXTENT AND EFFECT.

1. NATURE AND ACQUISITION.

This section recognizes the fact that the same land may be both agricultural and mineral.

Harrison, In re, 19 L. D. 299, p. 300.

Neither this nor the following section gives any right to agricultural claimants except to such lands as are clearly and properly agricultural, as Congress did not intend to do away with the well-established distinction so long recognized by legislation between agricultural and mineral lands, or to allow lands mineral in character to be acquired under the laws regulating the disposal of agricultural lands.

Carron v. Curtis, 3 C. L. O. 130.

When the statute provides for mineral entries upon lands valuable for minerals, and for agricultural entries upon lands clearly agricultural, there arises necessarily a comparison of their respective values whenever these two classes of claims come in conflict.

Caledonia Min. Co. v. Rowen, 2 L. D. 714.

See North Leadville v. Searl, Copp's Min. Lands, 274.

Kemp v. Starr, 5 C. L. O. 130.

Where the lands are claimed as more valuable for agricultural than for mining purposes, a hearing may be ordered to determine the character of the land.

Caledonia Min. Co. v. Rowen, 2 L. D. 714.

See Searl Placer Mine, In re, 9 C. L. O. 189.

Maxwell v. Brierly, 10 C. L. O. 50.

Central Pac. R. Co. v. Mineral Affiants, Copp's Min. Dec. 128.

2. AGRICULTURAL ENTRIES PROTECTED.

By this section the right of actual settlers upon lands reserved as mineral, and which have been occupied and used for agricultural purposes, and upon which valuable improvements have been made and no valuable mines have been discovered, are protected.

Carron v. Curtis, 5 C. L. O. 3.

See Carron v. Curtis, 3 C. L. O. 130.

The rights of a homesteader on mineral lands are recognized and protected by this section.

Carron v. Curtis, 5 C. L. O. 3.

3. HOMESTEAD ENTRIES—PROOF AS TO CHARACTER OF LAND.

Proof that lands in contest are valuable for agricultural purposes is sufficient on the part of an agricultural entryman, and a mineral claimant must establish the fact that valuable mines have actually been discovered on the land in dispute in order to overcome the proof as to the agricultural character of the land.

Carron v. Curtis, 5 C. L. O. 3.

See Carron v. Curtis, 3 C. L. O. 130.

Positive proof of the nonmineral character of lands in well-known mineral regions may be required from purchasers for agricultural or nonmineral purposes.

Townsite of Deadwood, In re, 8 C. L. O. 153, p. 154.

See Van Ocker, In re, 9 C. L. O. 71.

Where land has been returned by the surveyor general as agricultural in character this character of the land continues until its mineral character is satisfactorily shown, and upon a hearing the homestead entryman may rely upon the return of the surveyor general.

Dughi v. Harkins, 10 C. L. O. 309.

Under this section homestead entries are restricted to lands containing no valuable mines.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 331.

4. AGRICULTURAL CLAIMANT—NO PATENT AFTER MINERAL DISCOVERY.

Where it appears that valuable mines have been discovered on a tract of land before patent issues to an agricultural claimant, then no such patent should issue, as such discovery determines the mineral character of the land, and it must then be held subject to disposal as other mineral lands.

Scogin v. Culver, 7 C. L. O. 23.

Carron v. Curtis, 3 C. L. O. 130.

Where valuable mines are discovered on a tract of land before patent issues to an agricultural claimant, no patent should issue, as such discovery would determine the mineral character of the land, and it should then be disposed of as other mineral land.

Carron v. Curtis, 5 C. L. O. 3.

Title to known mines does not pass under a patent to agricultural land.

Hurlbut, In re, 5 C. L. O. 5.

5. MINERAL IMPROVEMENTS—EXTENT AND EFFECT.

The cutting of wood by mineral claimants and the burning of quantities coal are not strictly mineral improvements, though the wood and coal might be used in mining operations, but in the absence of evidence it will not be presumed that they were intended for such use.

Carron v. Curtis, 5 C. L. O. 3.

See Carron v. Curtis, 3 C. L. O. 130.

Hurlbut, In re, 1 L. D. 618.

SECTION 2342, REVISED STATUTES.

Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to preemption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Same as section 11, act of July 26, 1866 (14 Stat. 251, p. 263), p. 634.

A. MINERAL LAND SET APART AS AGRICULTURAL—EFFECT AND PROOF.

After the designation by the Secretary of the Interior, under this section, the lands are prima facie of agricultural character, and the burden of proof is upon a mineral claimant to show otherwise.

Caledonia Min. Co. v. Rowen, 2 L. D. 714.

Dughi v. Harkins, 10 C. L. O. 309.

Lands designated and set apart as agricultural lands under this section are prima facie agricultural and their mineral character can not be ascertained without a hearing.

Hooper v. Ferguson, 2 L. D. 712.

The regulation authorizing the Commissioner of the General Land Office to set apart as agricultural any lands so returned was to give effect to this section, and when so returned such lands could be filed under the homestead laws.

Hooper v. Ferguson, 2 L. D. 712.

Land is not "clearly agricultural," within the meaning of this section, where it is shown to be valuable for minerals by the hydraulic methods though not by the primitive method of pan-washing.

Krohn, In re, 10 C. L. O. 342.

Where land has been returned as agricultural, and entry made accordingly, the land is not withdrawn from such private entry on a suspension to investigate the alleged mineral character of such land.

Penn v. Marshall, 10 C. L. O. 342, p. 343.

SECTION 2343, REVISED STATUTES.

The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Same as section 7, act of July 26, 1866 (14 Stat. 261, p. 263), p. 633.

A. LAND DISTRICT—BLACK HILLS.

The Black Hills land district was established by virtue of the authority of this section, but this did not withdraw all the land from other disposition than under the mining laws.

Townsite of Deadwood, 8 C. L. O. 153, p. 154.
See Van Ocker, In re, 9 C. L. O. 71.

SECTION 2344, REVISED STATUTES.

Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July 25, 1866.

This section is substantially the same as the last sentence of section 17, act of July 9, 1870 (16 Stat. 217, p. 218), p. 671; and the last clause of section 12, act of May 10, 1872 (17 Stat. 91, p. 96), p. 682.

A. MINING RIGHTS NOT IMPAIRED.

B. LODE LOCATORS AFFECTED BY SUTRO TUNNEL EXEMPTED.

See Sutro tunnel act, p. 1383.

A. MINING RIGHTS NOT IMPAIRED.

1. RIGHTS ACQUIRED PRIOR TO 1872.

2. ALIEN'S RIGHTS NOT PROTECTED.

1. RIGHTS ACQUIRED PRIOR TO 1872.

The mining laws were not intended to impair the rights of quartz miners in cases where the locations were made prior to May 10, 1872.

Wilhelm v. Silvester, 101 Cal. 358, p. 361.

The provisions of this section seem to be limited to the rights acquired under the act of July 26, 1866 (14 Stat. 251), and under the act of July 9, 1870 (16 Stat. 217).

Gregory v. Pershbaker, 73 Cal. 109, p. 116.

This section operates to reserve out of a grant rights acquired prior to the passage of the act of May 10, 1872 (17 Stat. 91), and it secures the protection of such rights at the time of the issuance of the patent to persons availing themselves of the adverse procedure.

Lee v. Stahl, 13 Colo. 174, p. 178.

Priority of location and not priority of entry determines priority of title, and where a locator's rights accrued prior to the act of May 10, 1872 (17 Stat. 91), they are saved by this section, and it is not necessary for such locator to adverse another claim.

Lee Doon v. Tesh, 68 Cal. 43, p. 46.

Lee v. Stahl, 9 Colo. 208, p. 210.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 16.

2. ALIEN'S RIGHTS NOT PROTECTED.

A person claiming a mining location under the act of July 26, 1866 (14 Stat. 251), but who was not a citizen of the United States and had not declared his intention to become such, did not acquire any vested right to be preserved by this section.

Lee Doon v. Tesh, 68 Cal. 43, p. 49.

B. LODE LOCATORS AFFECTED BY SUTRO TUNNEL EXEMPTED.

The effect of this section is to exempt locators of lode claims affected by the Sutro tunnel from performance of the annual labor.

Sutro Tunnel Co., In re, 8 C. L. O. 54.

SECTION 2345, REVISED STATUTES.

The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the 10th day of May, 1872. And any bona fide entries of such lands within the States named since the 10th day of May, 1872, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of preemption as other public lands.

A. APPLICATION OF MINING STATUTES.

B. ENTRY OF MINERAL LANDS IN MINNESOTA.

A. APPLICATION OF MINING STATUTES.

This section declares the statutory law of the United States as it applied to the subject of mining on December 1, 1873.

Defieback v. Hawke, 115 U. S. 392, p. 402.

B. ENTRY OF MINERAL LANDS IN MINNESOTA.

Under this section, mineral lands in Minnesota are subject to the right of entry the same as under the preemption law.

United States v. Omdahl, 25 L. D. 157, p. 158.

SECTION 2346, REVISED STATUTES.

No act passed at the first session of the Thirty-eighth Congress granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the 30th day of January, 1865, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

A. MINERAL LANDS EXCLUDED FROM ALL GRANTS.

See sec. 2268, R. S., p. 833.

It is the practice of the Government, in the grant of lands to the States and to corporations to aid in the construction of railroads and for other purposes, not to include mineral lands but to reserve such to the United States, unless it is otherwise provided in the act making the grant.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 304.

This section expressly provides that railroad grants shall not be so construed as to embrace mineral lands.

Chicago Quartz Min. Co. v. Oliver, 75 Cal. 194, p. 196.

II. ORIGINAL MINING ACT, AMENDMENT, AND REVISED ACT.

ORIGINAL ACT.

14 STAT. 251, JULY 26, 1836.

AN ACT Granting the right of way to ditch and canal owners over the public lands, and for other purposes.

Be it enacted, etc., That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.

See sec. 2319, R. S., p. 9.

SEC. 2. That whenever any person, or association of persons, claim a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local customs or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon, an amount of not less than \$1,000, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant or association of claimants to file in the local land office a diagram of the same, so extended laterally or otherwise as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

See secs. 2324 and 2325, R. S., pp. 177, 269.

SEC. 3. That upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the register of the land office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of 90 days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the surveyor general, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of \$5 per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during the said period of 90

days, the register of the land office shall transmit to the General Land Office said plat, survey, and description; and a patent shall issue for the same thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued.

See sec. 2325, R. S., p. 289.

SEC. 4. That when such location and entry of a mine shall be upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the surveys to the limits of the premises according to the location and possession and plat aforesaid; and the surveyor general may, in extending the surveys, vary the same from a rectangular form, to suit the circumstances of the country and the local rules, laws, and customs of miners: Provided, That no location hereafter made shall exceed 200 feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth, with all its dips, variations, and angles, together with a reasonable quantity of surface for the convenient working of the same as fixed by local rules: And provided further, That no person may make more than one location on the same lode, and not more than 3,000 feet shall be taken in any one claim by any association of persons.

See sections 2320 and 2322 R. S., pp. 35, 99.

SEC. 5. That as a further condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

Section 5 is the same as section 2338 R. S. For further annotations see 2338 R. S., p. 608.

SEC. 6. That whenever any adverse claimants to any mine located and claimed as aforesaid shall appear before the approval of the survey, as provided in the third section of this act, all proceedings shall be stayed until final settlement and adjudication, in the courts of competent jurisdiction, of the rights of possession to such claim, when a patent may issue as in other cases.

See sections 2325 and 2326 R. S., pp. 289, 429.

SEC. 7. That the President of the United States be, and is hereby, authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this act.

Section 7 is the same as section 2343 R. S. For further annotations see section 2343 R. S., p. 623.

SEC. 8. That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

Section 8 is the same as section 2339 R. S. For further annotations see section 2339 R. S., p. 609.

SEC. 9. That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction

of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: Provided, however, That whenever after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

See section 2339 R. S., p. 609.

SEC. 10. That wherever, prior to the passage of this act, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the said settlers or owners of such homesteads shall have a right of preemption thereto, and shall be entitled to purchase the same at the price of \$1.25 per acre, and in quantity not to exceed 160 acres; or said parties may avail themselves of the provisions of the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," and acts amendatory thereof.

Section 10 is the same as section 2341 R. S. For further annotations see section 2341 R. S., p. 624.

SEC. 11. That upon the survey of the lands aforesaid, the Secretary of the Interior may designate and set apart such portions of the said lands as are clearly agricultural lands, which lands shall thereafter be subject to preemption and sale as other public lands of the United States, and subject to all the laws and regulations applicable to the same.

Section 11 is the same as section 2342 R. S., p. 627. For further annotations see section 2342 R. S., p. 627.

Amended by additions of sections 12, 13, 14, 15, 16, and 17, of act of July 9, 1867, 16 Stat., 217 p. 670.

Sections 1, 3, 3, 4 and 6 of this act are repealed by section 9 of the act of May 10, 1872 (17 Stat. 91, p. 94), p. 630.

A. MINING STATUTES.

B. LODE CLAIMS, p. 641.

C. PLACER LOCATIONS, p. 655.

D. COAL LANDS—ENTRY AND SALE, p. 655.

E. STATE AND SCHOOL GRANTS, p. 656.

F. WATER RIGHTS, p. 656.

G. PATENT PROCEEDINGS, p. 661.

H. ADVERSE CLAIMS, p. 668.

A. MINING STATUTES.

1. CONSTRUCTION AND CODIFICATION.
2. MINERALS APPROPRIATED PRIOR TO STATUTE.
3. RIGHTS OF MINERS RECOGNIZED AND PROTECTED.
4. OWNERSHIP OF MINERALS—RELINQUISHMENT.
5. SYSTEM FOR DISPOSAL OF MINERAL LANDS.
6. PROVISIONS FOR ACQUIRING TITLES.
7. NATURE AND EFFECT AS TO MINERAL LANDS.
8. RESERVATION OF MINERAL LANDS FROM SALE.
9. CHANGE OF POLICY—MINERAL LANDS OPENED TO EXPLORATION.

10. APPLICATION TO MINERAL LANDS.

11. AGRICULTURAL SETTLEMENTS PROTECTED.

12. EXPLORATION FOR MINERALS.

a. RIGHT TO EXPLORE RECOGNIZED.

b. SUBJECT TO LAWS, REGULATIONS AND CUSTOMS OF MINERS.

1. CONSTRUCTION AND CODIFICATION.

The provisions of this statute and of all other mining statutes as originally enacted are at present codified and embodied in sections 2318 to 2352 of the Revised Statutes.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 235.

This and the act of May 10, 1872 (17 Stat. 91), are considered in connection with the construction placed upon the act making a railroad grant.

Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 430.

It can not be supposed or inferred that Congress by this act intended to authorize, by inference merely, the commission of a great and intolerable nuisance and the perpetration of aggravated injuries to large communities by any method or means that might be adopted for the mining of lands purchased from the Government as mineral lands.

Woodruff v. North Bloomfield, etc., Min. Co. 18 Fed. 753, p. 774.

2. MINERALS APPROPRIATED PRIOR TO STATUTE.

Prior to the passage of this act certain important rights of miners had been recognized.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 634.

This was the first mining statute of general application ever passed by Congress, and prior to that date miners held possessory rights by locating under local laws, and these rights were locally respected by the usages and courts, and this act was intended to establish a general rule by which these local rights should be recognized by the Government, and the act recognizes local laws, customs, and usages with reference to the quantity of any lode to be entered except a general limitation to 3,000 feet, and except the locations made thereafter a limitation to 200 feet and an additional claim for discovery.

Hamill, In re, 1 C. L. O. 83.

Prior to this act it was customary for persons to take all mineral deposits without respect to the right of the United States, and under this act lands which prior thereto could only be sold at a regular offering can now be disposed of by the Government and a valid title conferred.

Jacob, In re, 7 C. L. O. 83, p. 84.

This act was the first general legislation by Congress looking toward the disposal of the reserve mineral lands and Congress followed the policy of disturbing as little as possible the existing order of things in the mining regions, and the act provides the means by which possessory rights, having their inception under mining district regulations, could be converted into complete titles by patent from the United States.

Douglas, In re, Copp's Min. Dec. 136, p. 137.

Prior to the passage of this act a locator of a mining claim upon the public domain was technically a trespasser against the United States; but the courts held that as between him and a third person he should be considered as being in possession with the assumed assent of the owner, and this act gave the assent of the United States to the exploration and occupation and purchase of mineral lands on the public domain,

and the locator is to be treated as an expressed licensee of the United States, and upon compliance with the terms of the act he has a right to appropriate the mineral therein.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 118.

The courts have recognized that prior to the adoption of this statute there were equitable circumstances connected with claims of miners located and worked upon the public domain that were binding upon the conscience of the governmental appropriator and should not be disregarded, and rights that had become vested by virtue of an implied license that could not be divested without a violation of all the principles of justice and reason.

Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104, p. 106.

The decisions of the courts prior to the adoption of this statute were to the effect that the nonaction of the General Government raised such a presumption of license to those engaged in mining the precious metals as to give them a standing in the courts to assert their rights and redress their wrongs against all persons except the General Government, and the right of mining for the precious metals was recognized as a franchise, and the attending circumstances might be sufficient to raise the presumption of a general grant from the sovereign of the privilege of so mining.

Gold Hill Quartz Min. Co., v. Ish, 5 Oreg. 104, p. 106.

See *Conger v. Weaver*, 6 Cal. 548.

Merced Min. Co. v. Fremont, 7 Cal. 317.

Hill v. King, 8 Cal. 336.

McKeon v. Bisbee, 9 Cal. 137.

Partridge v. McKinney, 10 Cal. 181.

State v. Moore, 12 Cal. 56.

Curtis v. Sutter, 15 Cal. 263.

Hughes v. Devlin, 23 Cal. 501.

Horn v. Jones, 28 Cal. 202.

Fralus v. Jefferson Gold, etc., Min. Co., 34 Cal. 558.

Correa v. Frietus, 42 Cal. 339.

3. RIGHTS OF MINERS RECOGNIZED AND PROTECTED.

Section 9 is the acknowledgment of a previous right instead of the creation of a new one.

Atchison v. Peterson, 87 U. S. 507, p. 513.

Basey v. Gallagher, 87 U. S. 670, p. 674.

Forbes v. Gracey, 94 U. S. 762.

Jennison v. Kirk, 98 U. S. 453, p. 456.

Broder v. Water Co., 101 U. S. 274, p. 275.

Parkersville District v. Wattier, 48 Oreg. 332, p. 339.

It was the established doctrine of the Supreme Court that the rights of miners, who had taken possession of mines and worked and developed them before the passage of this act, were rights which the Government had by its conduct recognized and encouraged, and was therefore bound to protect them.

Broder v. Water Co., 101 U. S. 274, p. 276.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 634.

There is no provision in the act itself for the protection of the rights therein recognized, and if such rights existed before as well as after the passage of the act, they were excepted from grants made after their inception and before the passage of the act to the same extent as after its passage.

Isaacs v. Barber, 10 Wash. 124, p. 132.

See *Jones v. Adams*, 19 Nev. 78.

Prior to the passage of this act the General Government, in carrying out a policy redounding to the public good, tacitly consented to the search for and development of mines, and the courts, applying what has been termed "the common law of mines," uniformly protected the rights of those engaged in mining for precious metals and recognized the binding force of local laws, customs, and usages of miners where such

laws and customs did not conflict with constitutions or legislative enactments, and held that persons engaged in mining enjoyed a species of franchise in the mine, and held the same free from the interference of all parties except the General Government.

Gold Hill Quartz Min. Co., v. Ish, 5 Oreg. 104, p. 105.

Prior to this act Government title to mineral lands could not be acquired, but the Government recognized the possessory rights of miners and other rules and regulations relating to the holding and working of mining claims, and such claims were reserved from survey, preemption, and from all grants; but section 2319, R. S. made all valuable mineral deposits in the public lands open to exploration and purchase.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 62 (dissenting opinion).

See Morton v. Nebraska, 88 U. S. (21 Wall.), 660.

Mining Co. v. Consolidated Min. Co., 102 U. S. 187.

4. OWNERSHIP OF MINERALS—RELINQUISHMENT.

Until the enactment of this statute the United States had not authorized and, except by its silence, had not in any way assented to the occupancy of its mineral lands in California, and all persons in possession of mining claims upon public lands were, as against the United States, trespassers and subject to be treated as such.

Lee Doon v. Tesh, 68 Cal. 43, p. 47.

It has always been conceded, at the time of and prior to the passage of this act, that mines of precious metals belonged to the eminent domain of the political sovereign as well under the laws of Spain as by the common law of England and the public law of the United States.

Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104, p. 106.

By this statute Congress provided a method by which title to mineral land might be acquired from the Government at nominal prices and by which the idea of a royalty on the product of the mine was forever relinquished.

Mining Co. v. Consolidated Min. Co., 102 U. S. 187, p. 173.

5. SYSTEM FOR DISPOSAL OF MINERAL LANDS.

This was the first general statute providing for the conveyance of mines and minerals.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 61.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 323.

Congress by this act enacted a complete system for the sale and other regulation of its mineral lands so totally different from that which governs other public lands as to show that it could never have intended to submit them to the ordinary laws for disposing of the territory of the United States.

Mining Co. v. Consolidated Min. Co., 102 U. S. 187, p. 174.

Hawke v. Deffebach, 4 Dak. 20, p. 26.

This act adopted a system for the disposition of mineral lands, and such a system as would give every citizen an equal opportunity to develop such lands and was intended to be the only method by which mineral lands could be appropriated, and it made no exceptions in favor of school or other grants.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 113.

This and a later mineral statute established a system for the disposal of the public mineral lands differing widely from all other methods of disposal of public land, and provides that mineral lands shall be disposed of under the provisions of the act and in no other way, because Congress intended this act to apply to all the public lands of the United States shown to be mineral in character and not otherwise granted or reserved.

Norager, In re, 10 C. L. O. 54.

This act was the beginning of the existing plan by Congress for the disposal of public mineral lands.

Utah v. Allen, 27 L. D. 53, p. 55.

This act superseded the statute of September 4, 1841 (5 Stat. 453), and introduced a new method of disposition of mineral lands.

Alabama, In re, 15, C. L. O. 7, p. 9.

This act provides an exclusive method for appropriating the mineral lands of the United States, and was the first act passed by Congress and possibly the first passed by any Government undertaking to dispose of its mineral lands.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 112.

Congress by this statute enacted a complete system for the sale and other regulation of its mineral lands.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 411.

6. PROVISIONS FOR ACQUIRING TITLES.

This act was the first to provide means for acquiring title to mineral lands.

Tucker v. Florida, etc., R. Co., 19 L. D. 414, p. 415.

This statute disposes of the mineral lands of the United States to actual occupants and claimants and provides a method for the acquisition of title, and applies to lands in the State of Nevada prior to the survey.

Heydenfeldt v. Daney, etc., Min. Co., 93 U. S. 634, p. 640.

See Garrard v. Silver Peak Mines, 94 Fed. 983.

Prior to the adoption of this statute it was customary for persons to take valuable mineral deposits without respect to the rights of the United States, but Congress by this act provided a way in which persons locating lands for mining purposes might acquire title, and this and other such acts must be liberally construed so as to facilitate the sale of such lands

Mineral Lands, In re, Copp's Min. Land 88, p. 89.

7. NATURE AND EFFECT AS TO MINERAL LANDS.

This mining act is substantially a preemption law.

Smith, In re, Copp's Min. Dec. 26.

This act practically provided for giving away mines of gold and silver and other precious mineral deposits, and every encouragement was offered to persons who would undertake to discover and develop the mineral resources of the country, and the liberal acts of Congress upon the subject of mines and mining have been supplemented by a liberal construction by the courts of the country.

Ellet v. Campbell, 18 Colo. 510, p. 519.

Congress by this statute intended that no surveys could be made of mineral lands until further ordered by it, and that there could be no sale, preemption, or other title acquired in mineral lands until proper provision by law for their disposition.

Mining Co. v. Consolidated Min. Co., 102 U. S. 167, p. 173.

8. RESERVATION OF MINERAL LANDS FROM SALE.

By this act all mineral lands of the United States Government are expressly reserved from sale or disposition under the homestead or preemption or other land acts, thereby showing it is the policy of the Government to protect with sufficient care its mineral interests in the public domain and adopting a distinct method of disposition of the same.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 296.

See Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104.

9. CHANGE OF POLICY—MINERAL LANDS OPENED TO EXPLORATION.

By this statute the policy of reserving mineral lands from sale was changed and all the mineral lands of the public domain were made free and open to exploration and occupation by citizens of the United States.

Deffeback v. Hawke, 115 U. S. 392, p. 401.

Prior to this act no one could acquire any vested right or equitable title in or to any mining claim; but the enactment of this statute marked a change in the governmental policy and introduced a new era in the history of mining enterprise.

Lee Doon v. Tesh, 68 Cal. 43, p. 48.

The discovery of gold in California being of such great value necessitated a change in the matter of the disposition of mineral lands to the end that they might be kept under Government control for the public good.

Tucker v. Florida R., etc., Co., 19 L. D. 414, p. 415.

This statute is the result of a policy on the part of Congress seeking to harmonize the right of sovereignty of the soil, inherent in the General Government with certain possessory rights growing out of the peculiar condition of things found in the western mining States and Territories, which had become engrafted upon the public lands by reason of local customs and legislative enactments.

Camden, In re, Copp's Min. Dec. 24.

10. APPLICATION TO MINERAL LANDS.

The mineral lands referred to in this act were those containing precious metals and did not include saline land, lead, or coal.

Alabama, In re, 6 L. D. 493, p. 500.

There is no attempt in this act to define mineral land, and provision is made for entry and patent of certain vein or lode claims, leaving the regulations to exploration and occupation of other mineral land of the public domain.

Elliott v. Southern Pac. R. Co., *In re*, 35 L. D. 149, p. 151.

This act made the mineral lands free and open to exploration and occupancy and designated the mineral as a vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, copper.

Jacob, In re, 7 C. L. O. 83.

The object of this statute is to dispose of the mineral lands of the United States for money value, and it is a matter of indifference to the Government whether the metal occurs in the form of a true or false vein.

Boles, In re, Copp's Min. Lands 82.

11. AGRICULTURAL SETTLEMENTS PROTECTED.

The purpose of section 10, which is substantially identical with section 2341, R. S., was to give to persons who had in good faith made agricultural settlements on public lands, theretofore designated as mineral but subsequently determined to be agricultural, a preference in entering such lands as homesteads over those admitted to similar rights by the section following.

Caledonia Min. Co. v. Rowen, 2 L. D. 714.

Smith v. Stewart, Copp's Min. Dec. 133.

Congress did not intend to abolish the distinction between mineral and agricultural lands or to allow mineral lands to be classed and disposed of as agricultural, but provided by this section that the public survey might be extended over a region so clearly mineral in character that it had previous to this enactment been reserved for mineral purposes.

Smith (Ekin), In re, Copp's Min. Dec. 131, p. 132.

The failure of a surveyor to properly segregate mineral from agricultural lands can not operate to defeat the rights of a mineral claimant, and as the returns of a surveyor are not conclusive as to the character of the land, an open and notorious possession of a mining claim is sufficient to charge an agricultural entryman with notice of the mineral character of land and to bring a lode or vein within the description of known mineral deposits.

Gold Hill Quartz Min. Co., v. Ish, 5 Oreg. 104, p. 108.

12. EXPLORATION FOR MINERALS.

a. RIGHT TO EXPLORE RECOGNIZED.

This act was held to be a statutory recognition of the right to explore for mineral land.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 634.

The first section of this act declares that all valuable mineral deposits in lands belonging to the United States, whether surveyed or unsurveyed, are free and open to exploration and purchase.

Davis v. Weibbold, 139 U. S. 507, p. 516.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 50.

By this statute the public domain was for the first time in the history of the country opened to exploration of mines and minerals, and to the occupation of such mines as might exist and be discovered therein.

Lee Doon v. Teah, 68 Cal. 43, p. 48.

This act is the first direct recognition on the part of the General Government of the right of citizens to explore the public domain for precious metals and to open and operate mines therefor.

Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104, p. 105.

The chief purpose of this act is to open all the mineral lands of the country to exploration and occupation and thus to encourage and stimulate mining operations.

Chollar Potosi & Bullion v. Julia, Copp's Min. Lands 93, p. 94.

This act provided a complete system for the sale and regulation of mineral lands and these were thereby declared to be free and open to exploration and occupation, and provision was made for issuing patents to locators of veins or lodes of quartz or other rock in place.

Hawke v. Deffebach, 4 Dak. 20, p. 26.

The license given by this section to explore, occupy, and mine was general, but the subsequent sections providing for securing title from the Government by mineral claimants apply only to veins or lodes of quartz or other rock in place.

Lee Doon v. Teah, 68 Cal. 43, p. 48.

b. SUBJECT TO LAWS, REGULATIONS, AND CUSTOMS OF MINERS.

From the time of the enactment of this statute to the enactment of the statute of May 10, 1872 (17 Stat. 91), citizens and those who had declared their intention to become such were permitted to explore and occupy mineral lands on the public domain, subject to such regulations as might be prescribed by law and the local customs or rules of miners, if not in conflict with the United States statute; and the customs, rules, and regulations of miners were those given, within the limits named, the force of legislative enactments.

Jennison v. Kirk, 98 U. S. 453, p. 458.

Coemos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.

Rush v. French, 1 Ariz. 99, p. 147.

Robertson v. Smith, 1 Mont. 410, p. 414.

Horst v. Shea, 23 Mont. 390, p. 395.

By this act the mineral lands of the public domain, surveyed or unsurveyed, are declared to be free and open to exploration and occupation to all citizens subject to such regulations as may be prescribed by law.

Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104, p. 107.

B. LODE CLAIMS.

1. STATE LAWS REGULATING.
2. LOCAL LAWS, RULES AND CUSTOMS—EFFECT.
3. MINERS' RULES—ADOPTION AND PROVISION.
4. RIGHTS SUBJECT TO LOCAL RULES OF MINERS.
5. POSSESSORY TITLE.
6. QUALIFICATIONS OF LOCATOR.
 - a. INDIVIDUALS.
 - b. ASSOCIATION OF PERSONS.
 - c. CORPORATION.
 - d. WHO MAY QUESTION.
7. LOCATION ON SURFACE.
 - a. INTENT OF STATUTE.
 - b. SURFACE IN CONNECTION WITH VEIN.
 - c. LENGTH ON LODE—FORM AND DIMENSIONS.
 - d. IRREGULAR AND EXCESSIVE LOCATIONS.
8. VEIN OR LODE SUBJECT OF LOCATION.
9. LIMITED TO SINGLE VEIN OR LODE.
10. VEIN OR LODE—MEANING AND DEFINITION.
11. LOCATION NOTICE.
12. DISCOVERY.
13. ROCK IN PLACE.
14. END LINES.
 - a. REQUIRED BY IMPLICATION.
 - b. PARALLELISM NOT REQUIRED.
15. EXTRALATERAL RIGHTS.
 - a. NATURE AND EXTENT.
 - b. LIMITED BY END LINES.
 - c. RIGHT AS AGAINST PATENTEE.
16. MARKING ON GROUND.
17. ASSESSMENT WORK.
18. FORFEITURE.
19. PRIVILEGE OF PURCHASING.
20. POSSESSION WITHOUT PATENT.
21. SALE OF ADJOINING LANDS—CONDITION.

1. STATE LAWS REGULATING.

See secs. 2320, p. 35; 2324, p. 177.

The provisions of this section give to the legislature of any State ample authority for the enactment of all necessary laws and regulations for the proper working and development of mines, and this refers to water ditches and flumes as well as to mines.

Taylor, In re, Copp's Min. Dec. 42.

A State may prescribe additional or supplemental rules, but if these increase the burdens or diminish the benefits granted by the Federal law it is only because the Government, as the owner of the property, sanctions or acquiesces in the exercise of such power.

Sharkey v. Candiani, 48 Oreg. 112, p. 122.

A local law permitting the locator of a mining claim to appropriate 160 acres is inoperative as against the express provision of this section providing that claims subsequently located shall not exceed 200 feet in length along the vein for each location with an additional claim for discovery to the discoverer of the lode, but in no case shall more than 3,000 feet be taken in any one claim by an association of persons.

New Idria Min. Co., In re, Copp's Min. Dec. 47, p. 57.

Hartson, In re, Copp's Min. Dec. 83.

International Min. & Exchange Co., In re, Copp's Min. Dec. 90 p. 91.

Douglas, In re, Copp's Min. Dec. 136, p. 137.

2. LOCAL LAWS, RULES, AND CUSTOMS—EFFECT.

See secs. 2324 and 2339.

This act is paramount to all local laws, rules, and customs; but so long as such laws, rules, and customs are not in conflict with the act they are of binding force and must be observed, but the act of Congress can not be subordinated to any local laws, rules, and customs, and a patent issued under this act can not be varied or the estate granted be limited by virtue of local laws and customs.

Wolfey v. Lebanon Min. Co., 4 Colo. 112, p. 119.

Congress by this act recognized the rules and customs of a mining district as having the force and effect of law.

King v. Edwards, 1 Mont. 235, p. 239.

When the local rules and customs of a mining district are not in conflict with the mining act such rules and customs become part of the law of the land and when complied with in the location of mining ground, a grant from the Government follows and title vests in the locator.

Gropper v. King, 4 Mont. 367, p. 369.

The reference to the local customs, rules, etc., in this section, as well as in sections 2324 and 2339, Revised Statutes, is equivalent to a legislative declaration that the salutary provisions of the Federal law were applicable only to the Pacific Coast States, leaving it to the courts to take judicial notice of such territory and custom without proof.

Parkersville District v. Wattier, 48 Oreg. 332, p. 336.

See *Isaacs v. Barber*, 10 Wash. 124.

This act introduced an entirely new system of mining laws and gave legislative sanction to the laws and customs of the local authorities affecting the possessory rights of mining claims, with the added privilege of acquiring title to the mine itself.

Papina v. Alderson, 10 C. L. O. 52, p. 53.

3. MINERS' RULES—ADOPTION AND PROVISIONS.

Previous to the passage of this act the miners in any mining district would, upon the discovery of a vein or lode, call a meeting and adopt regulations governing the length of claims upon such vein or lode, the width of surface ground to be taken therewith, and the amount of annual expenditure upon each claim.

Douglas, In re, Copp's Min. Dec. 136.

Previous to this act of Congress mining claims upon the public lands of the United States were held under rules adopted by the miners themselves in different localities.

Generally these rules prescribed the extent of ground which miners could severally appropriate for mining, and the conditions upon which it could be acquired and held. While these rules differed somewhat in different localities, yet they all recognized discovery and appropriation as the source of title and development by working as the condition of continued possession, and these conditions were usually specifically declared. Congress by this act gave the sanction of law to these rules of the miners, so far as they were not in conflict with the laws of the United States.

Jackson v. Roby, 109 U. S. 440, p. 441.

O'Reilly v. Campbell, 116 U. S. 418, p. 422.

See Jennison v. Kirk, 98 U. S. 453.

Gillis v. Downey, 85 Fed. 483, p. 486.

4. RIGHTS SUBJECT TO LOCAL RULES OF MINERS.

This act makes the rights of a mining claimant subject to local customs or rules of miners not in conflict with the United States statute; and recognizes such laws and customs in establishing the right of a claimant to receive a patent to a mining claim.

Lockhart v. Rollins, 2 Idaho 503, p. 507.

See Mining Co. v. Taylor, 100 U. S. 37, p. 42.

Table Mountain Tunnel Co. v. Stranahan, 20 Cal. 198.

Where the owner of a mining claim is in possession it will be presumed that he holds possession in accordance with the local rules and customs in the mining district.

Robertson v. Smith, 1 Mont. 410, p. 415.

Gropper v. King, 4 Mont. 367, p. 370.

Locations made prior to this enactment and in full compliance with local law are valid under this act for the quantity of land authorized by such local law, subject to the general limitation to 3,000 feet.

Hamill, In re, 1 C. L. O. 83.

This act adopts the provisions of the local mining customs as to the right of a locator to follow his vein or lode with its dips, angles, and variations to any depth even into adjoining land, and subordinates the rights of a patentee in respect to the surface ground to the more important rights in respect to the vein and the right to follow the same.

Williams, In re, Copp's Min. Dec. 27, p. 29.

This act grants to a miner who locates a particular portion of mining land in accordance with the local rules and customs of miners the right over the ground located and is a grant from the General Government to occupy, explore, and take therefrom the precious metals.

Robertson v. Smith, 1 Mont. 410, p. 416.

Belk v. Meagher, 3 Mont. 65, p. 79.

See Hopkins v. Noyes, 4 Mont. 550, p. 557.

Section 8 grants to the proper person an easement upon such of the mineral lands belonging to the public domain as he may appropriate in accordance with the local rules and customs of miners.

Robertson v. Smith, 1 Mont. 410, p. 414.

Belk v. Meagher, 3 Mont. 65, p. 79.

A condition to the sale of a mining claim by the United States under section 2 is that the applicant for title must have previously occupied and improved his claim in accordance with the local customs and rules of the mining district where the claim is situated.

Douglas, In re, Copp's Min. Dec. 136, p. 137.

This act does not legalize locations not made in accordance with the local rules and regulations, nor does it authorize an entry of a tract included within any unauthorized location.

New Idria Min. Co., In re, 6 C. L. O. 71, p. 73.

5. POSSESSORY TITLE.

The object of section 9 was to give the sanction of the United States to possessory rights, which had previously rested upon the local customs, laws, and decisions of the courts, and to prevent such rights from being lost on sale of the lands.

Jennison v. Kirk, 98 U. S. 453, p. 456.
Gillis v. Downey, 85 Fed. 483, p. 486.

In no provision of this act is any intention manifested to interfere with the possessory rights previously acquired, or which might afterwards be acquired; but the intention expressed was to secure such rights by patent from the Government.

Jennison v. Kirk, 98 U. S. 453, p. 459.

The object of this act is to furnish a method of dealing with conflicting interests in relation to mining properties so as not to impair the validity of either, and it recognizes and preserves such possessory claims as are valid and effective under local regulations.

Camden, In re, Copp's Min. Dec. 24, p. 25.

This act and the act of May 10, 1872 (17 Stat. 91), contain the expression of the sovereign legislative will regarding the general right of the possession of the public lands in the mineral regions and are to be construed together.

Titcomb v. Kirk, 51 Cal. 288, p. 294.

This statute gives to the locator of mining claims the exclusive right of possession and enjoyment of all the surface included within the lines of his location.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 42 (dissenting opinion).

Whatever difference of opinion may exist as to the tenure by which mining claims were held prior to the passage of this act, Congress by the act extended to all persons in possession of mining claims, and to all persons subsequently locating such claims, a guaranty of protection in their occupancy so long as the mines are operated and worked.

Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104, p. 108.

Mere naked possession of a mining claim upon the public lands is not sufficient to hold the claim as against a subsequent location made and kept alive in compliance with the law.

Hopkins v. Noyes, 4 Mont. 550, p. 556.

The possessory title to a mining claim is real estate and is a grant by the Government to the locator of an interest in the public domain and must be conveyed by deed.

Hopkins v. Noyes, 4 Mont. 550, p. 557.
See Robertson v. Smith, 1 Mont. 410, p. 414.

6. QUALIFICATIONS OF LOCATOR.

a. INDIVIDUALS.

Under this statute lands valuable for mineral deposits could be entered and located by any citizen of the United States and those declaring their intention to become such.

Van Ness v. Rooney, 160 Cal. 131, p. 135.

This act authorizes only certain persons to enter upon, explore and possess the mineral lands belonging to the United States, and all others are by necessary implication excluded, and this exclusion applies to a State or Territory as well as to an alien.

Territory v. Lee, 2 Mont. 124, p. 136.
Tibbitts v. Ah Tong, 4 Mont. 536, p. 540.
New Idria Min. Co., In re, Copp's Min. Dec. 47, p. 53.

b. ASSOCIATION OF PERSONS.

Under this act an association of persons, without legal existence, is incapacitated to occupy and improve a mining claim, or perform those acts of ownership or possession required of miners as conditions essential to the holding of such claims.

Terrible v. Gunboat, Copp's Min. Lands 80, p. 81.

c. CORPORATION.

A corporation organized under the laws of a State is not a citizen, within the meaning of this section, to which the mineral lands are open and subject to exploration and occupation.

New Idria Min. Co., In re, Copp's Min. Dec. 47, p. 54.

Where a corporation is an applicant for patent to a mining claim the proof must show that all the incorporators are citizens of the United States.

New Idria Min. Co., In re, Copp's Min. Dec. 47, p. 53.

A corporation created and existing under the laws of England is not a citizen of the United States and not capable of asserting a claim under the mining laws.

Terrible v. Gunboat, Copp's Min. Lands 80, p. 81.

d. WHO MAY QUESTION.

If persons not authorized by this act enter upon public lands, or if they acquire by purchase the possessory title to the same, the lands become subject to forfeiture; but it is a matter in regard to which the General Government must take action and the Territory itself has no right or interest therein.

Territory v. Lee, 2 Mont. 124, p. 135.

Under this act a Territory is not authorized to maintain an action to forfeit the possessory title of a placer mine held by an alien, though such an action is expressly authorized by the statute of the Territory, as a Territory is not called upon to aid Congress or the Executive in the execution and enforcement of the laws of the General Government.

Territory v. Lee, 2 Mont. 124, p. 136.

This act does not prohibit citizens who rightfully acquire possessory title to mining claims from selling and transmitting the same to aliens or to any other persons; but if an alien should take such title it could be forfeited by the Government as this right belongs to the General Government alone.

Territory v. Lee, 2 Mont. 124, p. 135.

See Tibbitts v. Ah Tong, 4 Mont. 536, p. 541.

7. LOCATION ON SURFACE.

a. INTENT OF STATUTE.

This statute must be construed liberally and with reference to the intent and object that Congress had in view, and in determining the question it is proper to consider the condition of the country and the general character of the mineral deposits, veins and lodes, and that it was the object of Congress to encourage the location and development of mining claims, and a location made in good faith can not be regarded as a fraud upon the Government and therefore the entire claim illegal and void.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 57.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

A mining claim may be located under this act and patented under the act of May 10, 1872 (17 Stat. 91).

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 50.

Record evidence can not be disregarded in locations made under this act.

Britton, *In re, Copp's Min. Lands* 122, p. 123.

This act is repealed by the act of May 10, 1872 (17 Stat. 91), as to the mode and manner of locating quartz claims.

Frohner v. Rodgers, 2 Mont. 179, p. 185 (dissenting opinion).

b. SURFACE IN CONNECTION WITH VEIN.

The surface land taken in connection with the linear location of a vein or lode, under this act, is intended solely for the convenient working of the mine and does not measure the miner's rights either as to the linear feet on the course or to follow the dips and variations of the vein.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Patterson v. Hitchcock, 3 Colo. 533, p. 543.

McCormick v. Varnes, 2 Utah 355, p. 361.

Under this act the surface ground was merely for the convenient working of the lode and the locator took the lode in its entirety, and the law contemplated its segregation in its length and not in its width, and nothing in the act indicates an intention to limit the rights of a locator to a portion of the lode in its width, and the discovery of any part of the apex of a vein is regarded by the law as a discovery of the entire apex.

Bullion, Beck & Champion Min. Co. v. Eureka Min. Co., 5 Utah 3, p. 54.

This act permitted claims to be located upon any vein or lode and allowed the locators to take with their lode claims surface ground to the width permitted by local laws.

Sacramento Min. Co. v. Last Chance No. 2 Min. Co., 3 C. L. O. 66, p. 67.

Congress, by this statute, did not intend to authorize miners to locate, or itself to grant, two separate and distinct estates, one in the surface ground and the other in the vein or lode, wherever it may be found in its course, without regard to the surface ground.

McCormick v. Varnes, 2 Utah 355, p. 361.

c. LENGTH ON LODGE—FORM AND DIMENSIONS.

An association of five persons will be permitted to locate and patent 1,000 feet of a lode with an additional 200 feet for the original discoverer.

San Xavier Mine, *In re, Copp's Min. Lands* 119, p. 120.

Section 4 limits the location to 200 feet in length along the vein, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth with all its dips, variations, and angles, with a reasonable quantity of surface for the continued working of the same; but it makes no provision for the surface areas or the form of the surface location, and the locator was permitted to follow the vein on its dip to any extent.

Mining Co. v. Tarbet, 98 U. S. 463, p. 467.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 63.

Davis v. Shepherd, 31 Colo. 141, p. 147.

See Wolfley v. Lebanon Min. Co., 4 Colo. 112.

McCormick v. Varnes, 2 Utah 355.

The laws have attempted to establish a rule by which each claim shall be so many feet of the vein lengthwise of its course to any depth below the surface, although laterally its inclination shall carry it ever so far from the perpendicular.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 29.

Mining locations, under this act, are limited to 200 feet for each locator with an additional claim for discovery, but locations made prior to the act are not so limited, but must be governed by other sections of the act, by local laws, customs, and rules of the mining district, subject only to the general limitation to 3,000 feet.

Hamill, In re, 1 C. L. O. 83.

Under section 2, mining claims located in accordance with the mining laws and regulations might include a greater quantity than 3,000 feet on a lode, as Congress intended that locations made under existing circumstances and local laws should stand if they conform to the rules and regulations of the particular mining district.

New Idria Min. Co., In re, 6 C. L. O. 71, p. 73.

See New Idria Min. Co., In re, 4 C. L. O. 130.

No location of a mining claim after the enactment of this statute shall exceed 200 feet; and a location of 3,000 feet or more in length on a lode by five persons can not be patented.

San Xavier Mine, In re, Copp's Min. Lands 119, p. 120.

Britton, In re, Copp's Min. Lands 122.

See Register and Receiver, In re, Copp's Min. Lands 235.

Section 4 limits a claim on all veins or lodes from and after the passage of the act, and this limit can not be exceeded notwithstanding any local regulation.

Douglas, In re, Copp's Min. Dec. 136, p. 137.

This limitation means that after the date of this act no person could locate more than 200 feet on the course of any lode or vein thereafter discovered except the discoverer, who could take an extra claim of 200 feet, and not more than 3,000 feet could thereafter be located upon any one vein by any association of persons, and to properly locate 3,000 feet of a lode would require not less than 14 bona fide locators, each taking a claim of 200 feet, with 200 additional feet to the discoverer.

Douglas, In re, Copp's Min. Dec. 136, p. 138.

This act limited the extent of lode claims and provided the method of obtaining title to lode mines.

Horst v. Shea, 23 Mont. 390, p. 395.

Under this act the locator had the right to the full length of his claim as located along the vein or lode, and this right was in no way impaired by the act of May 10, 1872 (17 Stat. 91).

Blake v. Butte Silver Min. Co., 2 Utah 54, p. 58.

While section 4 limits the right of a person to a lode longitudinally, yet it does not limit such right in the direction of the width of the lode; and while the right as to the width of the surface ground is limited, yet there is no limit to the right as to the width of the vein.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 51.

The line of location measures the extent of the miner's right along the general course or strike of the vein or lode.

McCormick v. Varnes, 2 Utah 355, p. 361.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

While there was liberty of surface from under this act, yet it strictly confined the locator's right on the vein below the surface.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 28.

d. IRREGULAR AND EXCESSIVE LOCATIONS.

A claim for 200 feet square for each of several locators not authorized by local laws or customs is invalid for so much as attempts to appropriate surface ground, and unless

that portion was intended merely as an estimate of the surface of the lode, in which case it would not be a controlling call.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 11.

A mining claim located under this act must conform as to length and width to the provisions of the act, and it can not be relocated under the act of 1872 (17 Stat. 91), so as to increase the width and at the same time retain the length as located under the provisions of this act, as such location would then be in violation of both acts.

Seymour (John), In re, Sickels Min. L. & D. 60, p. 62.

An excess of lineal feet in the surface location of a mining claim does not render it invalid under this act, and the same rule applies to the act of May 10, 1872 (17 Stat. 91).

Hansen v. Fletcher, 10 Utah 266, p. 272.

8. VEIN OR LODGE SUBJECT OF LOCATION.

The purpose of section 2 is the conveyance of the vein or lode and not the conveyance of certain areas of land within which is a vein.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 63.

Under this act the mineral vein or lode is the valuable thing sought and on discovery the locator must make his location in accordance with this act and the local rules and customs of the miners of the district, and a location in this sense refers to the surface grounds as well as to the vein or lode and must be along the general course or strike of the vein.

McCormick v. Varnes, 2 Utah 355, pp. 358, 360.

This section regards the vein as the valuable subject of the patent.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 51.

The claim to be secured by this section is that of a lode or vein, and the grant is of a mine, as synonymous to the term vein, together with the dips, angles, and variations to any depth and the right to follow such mine or vein into land adjoining.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 51.

Under this act the locator of a mining claim was only required to designate the lode in his notice of location, as the lode was the principal thing and the surface ground a mere incident thereto and for its convenient working.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

By this section a location and acquisition by means of a lode mining claim of any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, or copper is authorized.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 204.

Lines drawn vertically down through the vein at right angles with a line representing the general course at the end of a claimant's location will carve out a section of the vein or lode within which he is permitted to work and out of which he can not pass.

McCormick v. Varnes, 2 Utah 355, p. 361.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

English v. Johnson, 17 Cal. 108.

9. LIMITED TO SINGLE VEIN OR LODGE.

Under this act a locator could only hold one lode or vein, though more than one appeared within the lines of his surface location.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Brady v. Harris, 29 L. D. 426, p. 427.

Eclipse Gold, etc., Min. Co. v. Spring, 55 Cal. 304, p. 305.

This act gives a locator but one vein and the rights of parties claiming other veins can not be affected by any patent issued to a claimant for a single vein.

Blake v. Butte Silver Min. Co., 2 Utah 54, p. 57.

Under this statute each locator of a lode claim is entitled to but one vein without regard to a surface location, whereas under the act of May 10, 1872 (17 Stat. 91), the locator is entitled to all veins having the top or apex inside of his surface lines.

Blake v. Butte Silver Min. Co., 2 Utah 54, p. 57.

While the express purpose of this statute was primarily to grant a single vein, yet the rights of the locator beneath the surface were limited and controlled by his rights upon the surface; and on subsequent exploration if the vein departed from the boundary line of the surface location the point of departure was the limit of the right of the locator.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 64.

10. VEIN OR LODGE—MEANING AND DEFINITION.

See secs. 2319, p. 20; 2320, p. 36; 2322, p. 107.

A mineral vein or lode is a leading term in this as well as in the act of May 10, 1872 (17 Stat. 91), and this was what the miner had discovered and claimed by right of his discovery, and the securing of his title to such vein or lode was the practical necessity contemplated by both acts; and the right to surface ground under this act and to other veins or lodes and ledges apexing within the surface boundary under the act of May 10, 1872 (17 Stat. 91), are incident to the ownership of the vein or lode locator.

Patterson v. Hitchcock, 3 Colc. 533, p. 544.

See Wolfley v. Lebanon Min. Co., 4 Colo. 112.

No definitions of "vein" or "lode" are given in this act or in the act of May 10, 1872 (17 Stat. 91), but it was not the intention of the framers of this act that purely scientific definitions should be applied in giving them effect.

Hayes v. Lavagnino, 17 Utah 185, p. 195.

The miners' definition or understanding of a lode is what is meant by the mining acts of Congress of 1866 and 1872 (17 Stat. 91).

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Harrington v. Chambers, 3 Utah 94, p. 114.

These acts of Congress relating to mining locations were passed for the protection of the miners, and the terms "vein" and "lode" were employed in the sense in which miners had used them, uncontrolled by scientific definitions.

Hayes v. Lavagnino, 17 Utah 185, p. 195.

11. LOCATION NOTICE.

Title to a mining claim can have no inception prior to date of a notice of location.

Britton, In re, Copp's Min. Lands 122.

The location notice is sufficient where it is as full and contains as accurate a description of the premises located as it was customary for miners to record prior to the act of May 10, 1872 (17 Stat. 91).

Walker v. Schenck, 2 C. L. O. 2.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 7.

South Comstock Gold, etc., Min. Co., In re, 2 C. L. O. 146.

12. DISCOVERY.

The central idea of a mining location, as derived from this act, is that there must be a discovered lode within it whose locus in its onward course or strike is embraced by its boundaries.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 116.

This act appeals to the industry and enterprise of the miner to make sure that the vein or lode discovered is within his location, and if by lack of care and energy he makes a location not embracing a vein or lode, he can not be heard to complain that others have explored and occupied the adjacent territory and discovered therein a vein which might have been embraced in his diagram.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 116.

This act requires the surveyor general to certify to the character of the vein exposed and the certificate should show whether the vein exposed contains gold, silver, cinnabar, or copper.

Boles, In re, Copp's Min. Lands 82.

It is doubtful whether a discovery sufficient to support a valid mining location so as to exempt such location from a town-site patent, could be held to the same degree of strictness as would be required in the case of a mine known to exist at the time of the issuance of such town-site patent, but which had not previously been located.

Golden v. Murphy, 31 Nev. 395, p. 418.

Section 4 gives to the discoverer an additional claim of 200 feet for his discovery.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 50.

13. ROCK IN PLACE.

The term "rock in place," as used in the mining statutes, is liberally construed, and every class of claims that can be classed and applied for, either according to scientific accuracy or popular usage, as a vein or lode, may be patented under this act.

Boles, In re, Copp's Min. Lands 82.

Auriferous cement claims found in ancient river beds and usually worked by the hydraulic process do not properly come within the signification of the term "rock in place."

Stoddard, In re, Copp's Min. Lands 83.

Section 1 by its general application applies alike to veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, or copper, and to placer or gravel mines.

Lee Doon v. Teah, 68 Cal. 43, p. 48.

14. END LINES.

a. REQUIRED BY IMPLICATION.

While end lines are not in terms named in this act or in the rules of miners in the district in which the mine in controversy is located, yet they are necessarily implied and no reasonable construction can be given to them without such implication; and where the rules of the miners permitted a certain number of feet on a ledge, it means that each locator may follow his vein for that distance on the course of the ledge, and to any depth within such distance, and he was permitted to hold so much of the ledge as lay within vertical planes drawn through the end lines of his location, and could be measured anywhere by the feet on the surface, and no construction of this act or of such a rule is permissible which will substantially defeat the limitation of quantity on a ledge.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

See Price v. McIntosh, 1 Alaska 286, p. 297.

b. PARALLELISM NOT REQUIRED.

Under this act the end lines were not required to be parallel; they might converge or diverge, and they might do so even as to new veins, but such lines must be straight.

Walrath v. Champion Min. Co., 171 U. S. 293, p. 312.

Consolidated Wyoming Gold Min. Co. v. Champion Min. Co., 63 Fed. 540, p. 550.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.
 Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 668.
 Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 22.

This act did not require parallelism in the end lines of the surface location, and if under any possible circumstances a patent for a location without such parallelism may be valid the law will presume that such circumstances exist.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Parallelism of the end lines was not required under this statute, and the right to follow a vein or ledge along its course for the full distance claimed and underground upon its true dip to any depth was undisputed; and under the later act of May 10, 1872 (17 Stat. 91), where a claim is patented, the extralateral rights are controlled by the patented lines.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 73 Fed. 597, p. 599.

While parallel lines were not required by this act, yet extralateral rights were specifically given; and while the act refers to rules and regulations made by miners, it does not state that any such rule required parallel end lines.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 25.

Daggett v. Yreka Min., etc., Co., 149 Cal. 357, p. 373.

See Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147, p. 154.

Under this act if the end lines converge in the direction of the dip it gives the patentee less of the vein or lode in depth than he had at the surface.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 669.

The theory of the law is that the end lines of a mining claim should be at right angles to the vein or lode, and end lines may be extended so as to conform to the dip of a vein, and the law itself may give a claimant such end lines.

Daggett v. Yreka Min., etc., Co., 149 Cal. 357, p. 361.

The fact that the act of May 10, 1872 (17 Stat. 91), made parallelism in the end lines essential to the locator's right to follow his vein outside of the vertical planes drawn through the side lines, implies that a locator under this act had such right although his end lines were not parallel.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 26.

See Iron Silver Min. Co. v. Elgin Min. Co., 118 U. S. 196.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55.

Walrath v. Champion Min. Co., 171 U. S. 293.

Walrath v. Champion Min. Co., 63 Fed. 552.

Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147, p. 155.

Daggett v. Yreka Min., etc., Co., 149 Cal. 357, p. 373.

Gleeson v. Martin White Min. Co., 13 Nev. 442.

The design of the law is that the end lines should be at right angles to the vein, and where workings show the course of a vein is north and south then the end lines should be extended east and west to conform to its dip, and in such case the law gives the locator such end lines.

Daggett v. Yreka Min., etc., Co., 149 Cal. 357, p. 372.

See Argonaut Min. Co. v. Kennedy Min. Co., 131 Cal. 15.

15. EXTRALATERAL RIGHTS.

a. NATURE AND EXTENT.

The right granted to a claimant under section 2 is limited to a claim "in regard to whose possession there is no controversy or opposing claim," and gives him the right in such case to follow the vein or lode with its dips and angles to any depth in the adjoining land, and provides that all land adjoining shall be sold subject to this condition.

Chollar Potosi & Bullion v. Julia, Copp's Min. Lands 93, p. 94.

Construing all the provisions of this act together, this section was intended to permit the first locator or patentee to follow his vein, though it should lead into or under adjoining lands, and it was intended that such adjoining land should be sold subject to this right, and this right to follow the vein under any adjoining land does not create a controversy or opposing claim within the meaning of this section.

Chollar Potosi & Bullion v. Julia, Copp's Min. Lands 93, p. 95.

This section permits a patentee to follow his vein or lode in its descending course to any depth, although in its downward trend it is carried by its dips and variations into the adjoining land.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 114.

The right to follow a vein given by section 2, in connection with section 4, is confined to depth and can not by any construction be made to apply to the strike or course of the vein.

McCormick v. Varnes, 2 Utah 355, p. 361.

See *Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co.*, 5 Utah 3, p. 78.

This act, as well as the act of May 10, 1872 (17 Stat. 91), has made but one modification or change in the common-law rule, and that change is to allow a departure from the side lines of a claim on the dip of the vein.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co. 5 Utah 3, p. 69 (dissenting opinion).

The United States statute did not interfere with the rights granted to miners by local rules and regulations as to the right to follow the vein or lode as to all its dips, spurs, angles, and variations.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Wilhelm v. Silvester, 101 Cal. 358.

The under lines of a location and the distance between them will be the same at all depths as upon the surface, without regard to whether the position of the vein is vertical or whether it dips at a less or greater angle, as this results directly from the right granted to a miner by the local mining customs, as well as by the United States statutes, of following the vein with all its dips, angles, and variations.

Williams, In re, Copp's Min. Dec. 27, p. 29.

b. LIMITED BY END LINES.

This act in no respect enlarges the right of any mineral claimant beyond that which the rules of the mining district give him, and the patent which the act allows him to obtain does not authorize him to go outside of the end lines of his claim drawn downward vertically through the vein or lode, but only authorizes him to follow the vein with its dips, spurs, and angles to any depth, though it may enter land lying beyond the area included within his surface lines, but it must be land lying on the side of his claim and not on the ends of it.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Section 2, together with section 4, furnishes the only qualification or enlargement of the common-law right by which miners hold their claims and that is to the extent only that they may follow the lode from the apex found within the surface location on its dip to any depth, although in its downward course it may so far depart from a perpendicular as to enter adjoining land, but the end lines form a bulwark beyond which the miner may not go nor can he go beyond or outside his side lines on the course or strike of the vein, but only on its dip can this be done.

McCormick v. Varnes, 2 Utah 355, p. 362.

This act granted extralateral, underground rights to a mining claim without requiring parallelism of end lines, and to avoid the difficulties and confusion which arose

in ascertaining the extent of such lines under this act, the requirement of parallelism of end lines was imposed by the act of May 10, 1872 (17 St. 91, R. S. 2320).

Hidee Gold Min. Co., In re, 30 L. D. 420, p. 425.

C. RIGHT AS AGAINST PATENTEE.

A patentee of a mining location under this act is not entitled to follow his vein or lode in its onward course or strike beyond the lateral boundaries of his claim, as against a subsequent patentee of the adjoining land.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 120.

16. MARKING ON GROUND.

See sec. 2324, p. 213.

This act is silent as to the manner a mining claim shall be marked or designated on the ground.

Pollard v. Shively, 5 Colo. 309, p. 314.

17. ASSESSMENT WORK.

This act did not fix any amount of work or expenditure as necessary to hold a claim, but left that to be regulated by the miners themselves; but Congress provided that an amount of not less than \$1,000 should be expended on a claim as one of the conditions precedent to obtain a patent.

Douglas, In re, Copp's Min. Dec. 136, p. 138.

This act contained no provision respecting the performance of labor or the making of improvements during each year and placed no limitation in that respect upon the local laws, regulations, or customs, and in so far as it granted possessory rights or interests in the public mineral land, and in so far as it conferred upon the department jurisdiction of proceedings for the acquisition of title from the Government and relegated to the courts the determination of controversies between adverse claimants respecting the possessory title.

Brady v. Harris, 29 L. D. 426, p. 430.

According to the provisions of this act and mining rules, a mining claim may be held by work done upon any part of the claim and to the full extent of the location, and in case of a subsequent overlapping location the original locator is not required to perform work within the limits of such overlapping location in order to hold his claim.

Blake v. Butte Silver Min. Co., 2 Utah 54, p. 58.

18. FORFEITURE.

Under this statute and prior to the enactment of May 10, 1872 (17 Stat. 91), a failure to comply with the local rules and customs of a mining district would not work a forfeiture, unless such failure was declared by such rules or customs to be a forfeiture.

Rush v. French, 1 Ariz. 99, p. 152.

19. PRIVILEGE OF PURCHASING.

It was the intention of Congress by this act to give the right of purchase to a silver or gold bearing lode or vein to the person or association of persons who, in pursuance of the laws of the State or Territory and the local mining customs and regulations of the place, recognized by the laws and enforced by the courts, is the owner and entitled to the possession as against everybody except the Government.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Fed. Cas. 592.

The party, under this act, who can maintain his right to a claim in the local courts under the local laws, customs, rules and regulations, as against another individual as distinguished from the United States, is the party upon whom Congress intended to confer the right to purchase without reference as to how the right originated, if under such laws and customs and decisions of the local courts he has the present right.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Fed. Cas. 592.
Shafer v. Constans, 3 Mont. 369, p. 371.

The privilege given under this section is that of entering certain premises or tract provided all the conditions stated have been complied with, and it is a "tract" in "regard to whose possession there is no controversy or opposing claim."

Becker v. Central City, 2 C. L. O. 98.

20. POSSESSION WITHOUT PATENT.

There is nothing obligatory on a mineral claimant to proceed under the statute to obtain a patent, and if he fails to do so, where there is no adverse interest, he holds the same relation to the premises which he did before the passage of this act, with the additional guaranty that he possesses the right of occupancy under the statute.

Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104, p. 109.

The rights of a mineral claimant on a mineral claim properly located under the statute are neither forfeited nor abridged by the failure of such mineral claimant to procure a patent.

Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104, p. 109.

Under locations made in accordance with this and subsequent statutes much of the valuable mining lands of the United States have been held and worked and the title kept alive by the performance of the required work in each year, and the title so obtained has always been regarded as safe and secure, and there is no statute compelling any miner to patent his claim.

Van Ness v. Rooney, 160 Cal. 131, p. 136.

Possession is one of the elements of title and is made by this section a necessary subject of inquiry, and if found to be in anyone other than the applicant it is a bar to the issuing of a patent.

Becker v. Central City, 2 C. L. O. 98, p. 99.

Under this original act provision was made for locating, working, and holding, and obtaining patent for, any vein or lode of quartz or other rock in place bearing gold, silver, cinnebar, or copper.

Henderson v. Fulton, 35 L. D. 652, p. 653.

See Pilot Hill & Other Lodes, In re, 35 L. D. 592, p. 594.

21. SALE OF ADJOINING LANDS—CONDITION.

By express provision section 2 requires lands adjoining a mining location to be sold subject to the right of any prior locator to follow the vein or lode located by him on its dips and angles downward into such adjoining land.

Williams, In re, Copp's Min. Dec. 27, p. 29.

Land adjoining any lode claim shall be sold subject to the possessory rights of the miner, thereby protecting the miners' rights.

Hawke v. Deffeback, 4 Dak. 20, p. 32.

Without some unmistakable expression authorizing adjoining land to be sold, difficulties would arise in disposing of mineral lands, and to prevent this and to keep them

open and free to exploration and occupation it was enacted that mineral land should be disposed of in limited quantities and that lands adjoining those first located should remain open to exploration and sold subject to such rights as might have vested in the first locator.

Chollar Potosi & Bullion v. Julia, Copp's Min. Lands 93, p. 95.

C. PLACER LOCATIONS.

1. VALIDITY—FORM AND AREA.

2. POSSESSORY RIGHTS.

1. VALIDITY—FORM AND AREA.

Between the enactment of this statute and that of the act of July 9, 1870 (16 Stat. 217), placer locations, if made in conformity with local rules and customs, were valid whatever their form or area, as under the original act the Government granted a license only for the exploration and occupation of placer lands, but prescribed no mode for obtaining patent, and prior to the date of this act Federal legislation was silent on the subject of public mineral lands.

Horst v. Shea, 23 Mont. 390, p. 395.

This statute was the first lode law and was entirely different from the placer act of July 9, 1870 (16 Stat. 217), and these are largely independent of each other, and the size and extent of a lode claim have no application to placer claims.

Price v. McIntosh, 1 Alaska 286, p. 291.

This act was amended by the act of July 9, 1870 (16 Stat. 217), by the addition of sections 12 to 17, inclusive, and the amendatory act is known as the placer law of July 9, 1870.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 323.

2. POSSESSORY RIGHTS.

Possession of a placer claim, to be protected or to give vitality to a title, must be pursuant to law and local rules and regulations, and to be valuable must be properly supported and must be held in order to carry with it a possessory title to a possession without a location or under a location that has become dead for failure to comply with the law or with local rules and customs is of no avail.

Hopkins v. Noyes, 4 Mont. 550, p. 555.

In a controversy as to the possession of a placer claim located under this act the presumption of ownership which accompanies possession does not arise.

Hopkins v. Noyes, 4 Mont. 550, p. 555.

D. COAL LANDS—ENTRY AND SALE.

Coal lands, while now regarded as mineral lands, have never been held subject to entry under the mining laws, but have always, since a date long prior to the passage of this act, been disposed of under special statutes.

Truan, In re, 2 Copp's Pub. Lands 963.

The rights of claimants under this act apply equally to claims under the coal land laws of March 3, 1873 (17 Stat. 607).

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101.

California, In re, Copp's Min. Lands 340.

E. STATE AND SCHOOL GRANTS.**1. MINERAL LANDS EXCEPTED.**

The State of Nevada in accepting the grant of land for school purposes thereby consented to the reservation by Congress of the mineral lands and accepted the grant with the conditions and reservations mentioned in this section.

Heydenfeldt v. Daney Gold, etc., Min. Co., 10 Nev. 290, p. 311.

Lands returned as mineral by the surveyor can not be approved as State selections.

Lowry, In re, Copp's Min. Dec. 40.

A grant of school lands by the State is subject to the mineral rights acquired by another under the United States mining laws prior to the approval of the public survey under the act granting such lands to the State for school purposes.

Heydenfeldt v. Daney Gold, etc., Min. Co., 10 Nev. 290, p. 308.

A mineral claimant can acquire no rights in school sections in California where the survey was made prior to the date of this act.

Water & Min. Co. v. Bugbey, 96 U. S. 165, p. 167.

F. WATER RIGHTS.

1. POLICY OF GOVERNMENT AS TO USE OF WATER.
2. PURPOSE OF STATUTE.
3. CONSTRUCTION AND PROTECTION OF ACT.
4. VESTED WATER RIGHTS CONFIRMED AND PROTECTED.
5. PRIORITY OF APPROPRIATION DETERMINES RIGHTS.
6. PROTECTION TO RIGHTS SUBSEQUENTLY ACQUIRED.
7. RIGHTS OF WAY FOR DITCHES AND CANALS.
8. LIMITATION ON USE.
9. TITLE BY PRESCRIPTION—STATUTE OF LIMITATIONS
10. EXCEPTING CLAUSE IN PATENTS.
11. RIPARIAN OWNERS—APPLICATION OF DOCTRINE.
12. LIABILITY FOR INJURIES TO SETTLERS.

1. POLICY OF GOVERNMENT AS TO USE OF WATER.

Prior to the passage of this act the policy of Congress had been to grant to purchasers of public land the bed of a nonnavigable stream flowing through the land sold, and section lines were run with reference to the meanderings of a stream, and a purchaser of land took the bed of a stream and such riparian rights as belong to the owner of the soil, and all attempts to make rectangular surveys of mineral land were successfully resisted by the mining community and because of the ruinous effects to the purchasers of quartz lodes.

Union Mill. & Min. Co. v. Ferris, 24 Fed. Cas. 594.

This act does not give the right to enter upon lands in the possession of another for the purpose of securing water or of completing an attempted diversion of water.

Taylor v. Abbott, 103 Cal. 421.

De Wolfskill v. Smith, 5 Cal. App. 175, p. 183.

2. PURPOSE OF STATUTE.

Three distinct objects were in view in the passage of this statute:

1. The confirmation of all existing water rights.
2. To grant the right of way over public lands to persons desiring to construct flumes or canals for mining purposes.

3. To authorize the recovery of damages by settlers on such land.

Jacob v. Lorenz, 98 Cal. 332, p. 336.

Hobart v. Ford, 6 Nev. 77.

Barnes v. Sabron, 10 Nev. 217.

This section was born of the necessities of the country and its people, and as the Government owned both the land and the water it had the power to permit the use of the water for mining or other purposes without regard to riparian rights.

Reno Smelting, etc., Works v. Stevenson, 20 Nev. 269, p. 280.

This act shows that no diversion or appropriation of water for mining or other purposes had been authorized, but the act was passed to protect those who at that time were diverting water from its natural channel for mining and other purposes.

Vansickle v. Haines, 7 Nev. 249, p. 280.

The provisions of this section and of section 17 of the act of July 9, 1870 (16 Stat. 218), refer only to the interest of those who have gone upon the public domain and done acts of ownership there which the Government, as proprietor, could have prevented, but in which it acquiesced, and these acts were intended merely to recognize and ratify the system which had grown up on the public domain, and the vested and accrued rights mean the vested and accrued rights as between locators and not as against the Government.

Cave v. Tyler, 133 Cal. 566, p. 568.

3. CONSTRUCTION AND PROTECTION OF ACT.

This section can not be construed to enlarge the grant to ditch owners so as to include a right not recognized and acknowledged by the local customs, laws, and decisions of the court.

Titcomb v. Kirk, 51 Cal. 288, p. 294.

In order to obtain the protection of this section it is necessary to show the construction of a tunnel or ditch for mining or agricultural purpose and that the land over which the canal or ditch is or is to be constructed is public.

Hobart v. Ford, 6 Nev. 77, p. 81.

This section only confirms to the owners of ditches and water rights on the public domain the same privileges they enjoyed under local customs, laws, and decisions of the courts prior to its passage.

Atchison v. Peterson, 87 U. S. 507, p. 513.

Basey v. Gallagher, 87 U. S. 670, p. 674.

Jennison v. Kirk, 98 U. S. 453, p. 456.

Broder v. Water Co., 101 U. S. 274, p. 275.

Carson v. Gentner, 33 Oreg. 512, p. 516.

This act construed in connection with the act of July 9, 1870 (16 Stat. 217), gives to a person the right to construct and use a reservoir on the public lands for certain purposes, and such right is properly saved and excepted in a patent issued to another for the land on which such water right is situated.

Farley v. Valley Min., etc., Co., 58 Cal. 142.

The act of Oregon approved February 24, 1885 (Hill's Annot. Laws, secs. 4057-4060), is, like the act of Congress, a legislative sanction of the existing customs of miners rather than the granting of a new easement in the real property, and protects vested water rights for mining and other purposes on State lands.

Carson v. Gentner, 33 Oreg. 512, p. 519.

Parkersville District v. Wattier, 48 Oreg. 332, p. 339.

The right granted by this act as to the use of water for mining and other purposes is sufficient authority to appropriate water for manufacturing purposes.

Parkersville District v. Wattier, 48 Oreg. 332, p. 341.

4. VESTED WATER RIGHTS CONFIRMED AND PROTECTED.

Section 9 was a voluntary recognition of a preexisting right of possession constituting a valid claim to the continued use of water for mining and other purposes.

Broder v. Water Co., 101 U. S. 274, p. 275.

Lux v. Haggin, 69 Cal. 255, p. 345.

For many years prior to this enactment the mineral land of California and Nevada had been occupied without objection on the part of the Government, and canals and ditches dug over the public lands and waters of the streams thus diverted for mining and other purposes, and the possessory rights to public lands, mining claims, and water were regulated by State statutes, and by rules adopted at miners' meetings which governed the location, recording, and working of mining claims, and these were all recognized by the courts and enforced in trials of mining rights.

Union Mill & Min. Co. v. Ferris, 24 Fed. Cas. 594.

This statute recognized the rights and equities, even as against the United States itself as well as other miners, of those who had acquired water rights for mining and other purposes, and provided that they should be maintained in these rights and gave them a right of way over the public lands, but it made persons liable for any injury or damage to the possession of any settler on the public domain.

Woodruff v. North Bloomfield, etc., Min. Co., 18 Fed. 753, p. 773.

Section 9 protects such rights in mining ditches or canals as have vested and accrued by priority of possession, and which, at the time of the disposal of the land by the United States Government, are recognized and acknowledged by the local customs, laws, and decisions of the courts of a State.

Camden, In re, Copp's Min. Dec. 24, p. 25.

Williams, In re, Copp's Min. Dec. 82.

Williams, In re, Sickels Min. L. & D. 466, p. 467.

Barnes v. Sabron, 10 Nev. 217, p. 231.

Sullivan v. Northern Spy Min. Co., 11 Utah 438, p. 442.

See Taylor, In re, Copp's Min. Dec. 42.

This statute protected water rights and the right of way for the construction of ditches for mining and other purposes.

De Wolfskill v. Smith, 5 Cal. App. 175, p. 182.

This act confirms to the owners of mining claims, ditches, and water rights on the public lands of the United States the same rights which were accorded to them by the local laws, customs, and decisions of the courts prior to its enactment.

Titcomb v. Kirk, 51 Cal. 288, p. 294.

Water rights acquired under section 9 for mining and other purposes were protected by the act of July 9, 1870 (16 Stat. 217).

Hill v. Lenormand, 2 Ariz. 354, p. 358.

5. PRIORITY OF APPROPRIATION DETERMINES RIGHTS.

This act, as well as the act of July 9, 1870 (16 Stat. 217), and section 2339 R. S., recognizes and protects the prior appropriator of water and all vested water rights on public lands for mining and other purposes.

Willey v. Decker, 11 Wyo. 496, p. 519.

See Thorpe v. Freed, 1 Mont. 651, p. 655.

Where the right to the use of running water for mining or other purposes is based upon appropriation and not upon ownership in the soil, the first appropriation has the superior right.

Barnes v. Sabron, 10 Nev. 217, p. 233.

See Lobdell v. Simpson, 2 Nev. 274.

Ophir Silver Min. Co. v. Carpenter, 4 Nev. 534.

Vansickle v. Haines, 7 Nev. 249.

Section 9 declares that the person who has acquired a right to the use of water by priority of possession shall be maintained and protected in the same if his right is recognized and acknowledged by local customs, laws, and decisions of courts, and a possessory right to the use of water is determined by a reference to the local customs, laws, and decisions; but the act is prospective in operation and can not apply so as to divest a part of an estate granted before its passage.

Water & Min. Co. v. Bugbey, 96 U. S. 165, p. 166.

Union Mill & Min. Co. v. Ferris, 24 Fed. Cas. 594.

See *Union Mill & Min. Co. v. Dangberg*, 24 Fed. Cas. 590.

Vansickle v. Haines, 7 Nev. 249.

The principle of prior appropriation of water on the public lands in California, where its artificial use for agricultural, mining, and other purposes is absolutely essential and which has been recognized and sanctioned by the local customs, laws, and decisions, was expressly recognized and sanctioned by this act of Congress.

Osgood v. El Dorado Water, etc., Min. Co., 56 Cal. 571, p. 589.

A patent for land prior to the passage of this act defeated the claims of a prior appropriator of water for mining purposes.

Jones v. Adams, 19 Nev. 78.

Parkersville District v. Wattier, 48 Oreg. 332, p. 340.

6. PROTECTION TO RIGHTS SUBSEQUENTLY ACQUIRED.

Water rights vesting and accruing after the enactment of this statute are protected by sections 2339 and 2340 of the Revised Statutes.

Jacob v. Lorenz, 98 Cal. 332, p. 335.

The doctrine of this case applies to the protection of water rights vested prior to the enactment of this statute, and has nothing to do with the protection of water rights acquired since the passage of that act.

Vansickle v. Haines, 7 Nev. 249, explained in *Jacob v. Lorenz*, 98 Cal. 332, p. 336.

7. RIGHTS OF WAY FOR DITCHES AND CANALS.

The purpose of the statute was to secure the right of way of owners of ditches and canals across existing mining claims, if the title of the United States was conveyed to the holders of such mining claim, notwithstanding the fact that this right was recognized by the local customs, laws, and decisions.

Jennison v. Kirk, 98 U. S. 453, p. 460.

Section 9 does not grant rights of way where none existed before, nor confer additional rights upon owners of ditches subsequently constructed.

McGuire v. Brown, 106 Cal. 660, p. 668.

See *Jennison v. Kirk*, 98 U. S. 453, p. 460.

Robertson v. Smith, 1 Mont. 410.

A right of way over mining ground is fully protected by section 8 of this act.

Williams, In re, *Copp's Min.* Dec. 76.

The proviso of this act does not authorize the construction of a ditch or canal across the mining claim of another, whatever may be its effect in respect to settlers on agricultural lands.

Titcomb v. Kirk, 51 Cal. 288, p. 294.

8. LIMITATION ON USE.

The only limitation placed upon the vested right in water appropriated under this statute is the use for which the appropriation is made, and the right to water must

be exercised with reference to the general condition of the country and the necessities of the people and not to vest an absolute monopoly in a single individual.

United States v. Bennett, 207 Fed. 524, p. 529.

The water rights granted by this section were limited to territory in which the local customs of miners were recognized and enforced on the discovery of gold, and where local regulations were adopted by miners for the purpose of prescribing the areas and boundaries of public land which a miner might select, and defining his right in respect to the use of water in the mining and washing of gold.

Brown v. Baker, 39 Oreg. 66, p. 72.

See Lux v. Haggin, 69 Cal. 255.

The vested water rights protected by this statute apply only to those upon Government land.

Carson v. Gentner, 33 Oreg., 512, p. 517.

See Curtis v. La Grande Water Co., 20 Oreg. 34.

9. TITLE BY PRESCRIPTION—STATUTE OF LIMITATIONS.

The statutes of limitation do not run against the Government and no use of water while the title to the land is in the Government can avail the user as a foundation of title by prescription or defeat or otherwise affect the title conveyed by a patent to a mineral claimant, and none of the time during which period he uses water prior to the issue of the patent can be counted as part of his adverse possession.

Union Mill. & Min. Co. v. Ferris, 24 Fed. Cas. 594.

10. EXCEPTING CLAUSE IN PATENTS.

Under section 9, as well as under section 17 of the amendatory act of July 9, 1870 (16 Stat. 217), an excepting clause is inserted in patents for mining locations protecting and reserving water rights.

Williams, In re, Copp's Min. Dec. 82.

While the use of water for mining and other purposes, and of rights for the construction of ditches and canals, used in connection with water rights, are fully protected, yet a clause is authorized to be inserted in mineral patents expressly protecting and reserving such water rights.

Sargent, In re, Copp's Min. Lands 84.

Patents issued by the United States since the adoption of this act are subject to the water rights existing at that date, but Congress could not interfere with water rights acquired under a patent previously issued.

Vansickle v. Haines, 7 Nev. 249, p. 280.

11. RIPARIAN OWNERS—APPLICATION OF DOCTRINE.

The doctrine of the common law as to the right of riparian proprietors is applicable only to a limited extent to the wants of the people on the Pacific coast, whether engaged in mining or other pursuits.

Jones v. Adams, 19 Nev. 78, p. 84.

See Union Mill. & Min. Co. v. Ferris, 24 Fed. Cas. 594.

The United States as owner of the public domain, including the streams of water, could, either by legislation or by acquiescence, change the rule of the common law as to the right to the use of the water in such streams, but it would not follow therefrom that if no rights had been acquired by virtue of such modification of the common-law rule until after the Government parted with its title to the land, that the common-law rule would be at all affected thereby; but when the Government parted with its title, its right to change the rule as to riparian rights would be determined.

Issacs v. Barber, 10 Wash. 124, p. 133.

In order that a person may claim all the water of a stream as against a lower riparian proprietor, he must show that he first took the water according to the acknowledged local customs and rules of miners.

Lewis v. McClure, 9 Oreg. 273, p. 274.

12. LIABILITY FOR INJURIES TO SETTLERS.

Section 9 confers no additional rights upon the owners of ditches subsequently constructed, but renders them liable to parties on the public domain whose possessions might be injured by their construction. The provision means that whenever rights to the use of water by priority of possession had become vested, and were recognized by the local customs, laws, and decisions of the courts, the owners and possessors should be protected; and any liability for injuries to the possessions of others on the public domain should apply to ditches subsequently constructed.

Jennison v. Kirk, 98 U. S. 453, pp. 460, 461.

G. PATENT PROCEEDINGS.

1. STATUTE PROVIDES FOR PATENT.
2. APPLICATION.
 - a. FORM AND SUFFICIENCY.
 - b. DIAGRAM.
 - c. DESCRIPTION—EFFECT OF VARIANCE.
 - d. EFFECT AS AN APPROPRIATION OF GROUND.
 - e. NO DELAY IN ABSENCE OF ADVERSE CLAIM.
 - f. REGISTER'S DUTY.
 - g. OPTION OF APPLICANT.
3. REQUIREMENTS—PROOF OF COMPLIANCE.
4. EXTENT OF GROUND GRANTED TO APPLICANT—SURFACE AND LODE.
5. CONFLICTING CLAIMS AND GROUNDS—EFFECT.
6. NOTICE AND PLAT OR DIAGRAM—POSTING AND PUBLICATION.
7. EXPENSES AND FEES—DEPOSIT.
8. EFFECT AND EXTENT OF PATENT AS A CONVEYANCE.
9. CONDITIONS AND EXCEPTIONS INSERTED.
10. ACCEPTING PATENT—EFFECT AND WAIVER OF RIGHTS.

1. STATUTE PROVIDES FOR PATENT.

See secs. 2325, p. 289, and 2326, p. 429.

This statute provides for the acquisition of a patent by any person or association of persons claiming a vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, or copper.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Pilot Hill & Other Lodes, In re, 35 L. D. 592, p. 594.

Henderson v. Fulton, 35 L. D. 652, p. 653.

This statute provides for the procuring of a patent by any person or an association of persons claiming a vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, or copper.

Hayes v. Lavagnino, 17 Utah 185, p. 195.

This act prescribed a method whereby the owners of mining claims located prior to its enactment may receive patents for their claims.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

This act and later mining laws are the only laws under which patents to mining claims, either lode or placer, can be obtained.

Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104, p. 108.

This statute gives a claimant the right to a patent to a vein or lode previously occupied and improved according to the local customs or rules of miners, where an amount of not less than \$1,000 in labor or improvements has been expended thereon, granting to him the right to follow the vein or lode in its dip downward.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 666.

2. APPLICATION.

a. FORM AND SUFFICIENCY.

See sec. 2325, p. 280.

An application under this patent is not required to be under oath and is not invalid because it fails to designate the specific surface ground claimed.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 7.

See South Comstock Gold, etc., Min. Co., In re, 2 C. L. O. 146.

The application of which a diagram is a part must allege the claim as required by the local laws, customs, and rules, and if no surface ground is provided for, a failure or omission to state the amount claimed by specific description is not a defect.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 7.

See South Comstock Gold, etc., Min. Co., In re, 2 C. L. O. 146.

b. DIAGRAM.

An applicant for patent must conform to the provisions of this section and must file in the local land office a diagram of the mining claim, and such diagram must be "so extended laterally or otherwise as to conform to the local laws, customs, and rules of miners," and it is not sufficient that the diagram show that no surface ground is claimed along the line of the lode.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

Gold Hill Tunnel Gold, etc., Min. Co., In re, Copp's Min. Dec. 165.

The law contemplates that before a locator prepares his diagram with his application for patent he shall so far expose and develop his vein or lode as to be able to trace its course, but the statute does not require the diagram to be in the form of a parallelogram, or in any other particular form.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 115.

The claimant has a right to follow the course of the vein or lode and prepare his diagram so as to include together therewith such surface ground on each side thereof as was allowed by local laws and regulations, and the diagram is not required to be in the form of a parallelogram.

Carson City Gold, etc., Min. Co. v. North Star Min. Co., 83 Fed. 658, p. 669.

Wolfley v. Lebanon Min. Co., 4 Colo. 112.

This act requires the applicant for a patent to file in the local office a diagram of his claim, and such diagram must necessarily present something more than the mere linear location; and it is intended that it should embrace the surface claimed for the working of the mine.

Eureka Consol. Min. Co. v. Richmond Min. Co. 8 Fed. Cas. 819.

C. DESCRIPTION—EFFECT OF VARIANCE.

Where there is no material variation between the location and application and the final survey there can be no objection to the proceeding.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 12.
See South Comstock Gold, etc., Min. Co., In re, 2 C. L. O. 146.

D. EFFECT AS AN APPROPRIATION OF GROUND.

An application for a patent for a mining claim under this statute is such an appropriation of the ground embraced therein as takes it out of the operation of the local laws, and no forfeiture can be claimed under the act of 1872, for the time for performing the annual expenditure of labor and improvements was extended to January 1, 1875.

Daney Gold, etc., Min. Co. v. Sapphire Silver Min. Co., 2 C. L. O. 66.
Sapphire Silver Min. Co., In re, Sickels' Min. L. & D., 66, p. 67.
Crown Point Lode, In re, Sickels' Min. L. & D., 116.

E. NO DELAY IN ABSENCE OF ADVERSE CLAIM.

Where no adverse claim is filed within the 90-day notice of publication, an application can not be delayed by reason of an alleged conflict of ground, asserted more than 18 months after the original application was made.

Hardesty, In re, Copp's Min. Dec. 230, p. 231.

F. REGISTER'S DUTY.

The register's duty in the first instance is to pass upon the regularity of the application for patent and the right of the applicant to make application for the tract described, and from his decision an appeal lies to the General Land Office.

Empire Gold, etc., Min. Co., In re, 5 C. L. O. 50.

G. OPTION OF APPLICANT.

Where a mineral entry has been made under this act but patent has not been issued prior to May 10, 1872, the applicant has the option of making a relocation under the act of May 10, 1872 (17 Stat. 91), and commence proceedings as though no previous application for patent had been undertaken by complying with the provisions of this later act.

San Xavier Mine, In re, Copp's Min. Lands 119, p. 120.

3. REQUIREMENTS—PROOF OF COMPLIANCE.

Section 3 sets forth the steps necessary to be taken to secure patent.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 63.

This act contains full regulations for the filing of applications for patent, with notice thereof, and for asserting and determining adverse claims.

Brady v. Harris, 29 L. D. 426, p. 429.

An applicant for patent for mining claim must file with his application proof that he had previously occupied and improved the premises applied for in accordance with the local customs or regulations of miners, and had expended in labor and improvement not less than \$1,000.

Bullion Min. Co., v. 420 Min. Co., Copp's Min. Dec. 219, p. 220.

This act authorizes the issuance of patents to parties who comply with the law and the local or district regulations; and the patent grants the right to follow the particular vein or lode patented for the number of feet expressed therein.

International Min. & Exchange Co., In re, Copp's Min. Dec. 154, p. 155.

Before a claimant is entitled to a patent under this act a compliance with its provisions is indispensable, and the object of this is to require that the claimant shall, before applying for a patent, ascertain the exact location of his lode and fix that location by his diagram so that the public may be apprised of the limits of his location and may explore with safety adjoining tracts of land.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 117.

To entitle a party to a patent under this section his claim must have been occupied and improved according to the local customs or rules of miners of the district, and that his diagram of the same filed in the Land Office in its extension laterally or otherwise must be in conformity with them.

Eureka Consol. Min. Co. v. Richmond Min. Co. 8 Fed. Cas. 819.
Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 21.
Masters, In re, Copp's Min. Lands 82.

4. EXTENT OF GROUND GRANTED TO APPLICANT—SURFACE AND LODE.

An applicant for patent for a mining claim who is not himself the discoverer is entitled to only 200 feet under this act.

Shoo Fly v. Gisborn, 1 C. L. O. 135.

Where the local laws and customs permit no surface ground except the surface of the lode and where the walls of the lode have never been ascertained or determined, an application may be patented for an estimated surface, or a grant of the lode may be made with right to the surface over it and leaving the extent of the surface to be subsequently determined; but the former is the preferable course, but in such case a reservation may be made reciting the fact that the surface ground described is the estimated area of the lode and only the actual surface ground embraced within the walls of the lode is intended to be conveyed.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 7.
See South Comstock Gold, etc., Min. Co., In re, 2 C. L. O. 146.

An application for a patent for 480 acres is in excess of the quantity of land that could be located under this act and the company making the application is accorded no greater rights than the locators possessed by virtue of their location, and by its purchase it did not acquire the right to have or take a patent for more than 160 acres in the land district in which the Rancho Panoche Grande and New Idria mines were located.

New Idria Min. Co., In re, 6 C. L. O. 71, p. 73.
See New Idria Min. Co., In re, 4 C. L. O. 130.
New Idria Min. Co., In re (decided Aug. 4, 1871).
McGarrahan v. New Idria Min. Co., 3 L. D. 422.

Where an application for patent was posted upon locations made under this act and was pending on May 10, 1872, the patent subsequently issued granted the patentee the locations described with the exclusive right of possession and enjoyment of 1,185 linear feet of the vein or lode, this being the length on the apex between the end lines, throughout its entire depth, although it might enter the adjoining land, but limited the right to such portions of the vein or lode as lay between vertical planes drawn downward, and the fact that the patent was granted under the act of May 10, 1872 (17 Stat. 91), was not a waiver of the extralateral rights on the vein located, because the end lines were not parallel, the patent itself reciting that it was made pertinent to each of said acts and upon an application pending at the date of the enactment of the act of May 10, 1872.

Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147, p. 150.

Under this act a locator of a vein or lode could take patent for such incidental or inclosing surface as was accorded by the local customs and rules of miners or such as

was necessary for the convenient working of the vein or lode, with the right to follow it with its dips, angles, and variations to any depth without entering adjoining land, and such locator could take but one vein or lode, though his surface area might contain another, and he could not go beyond the planes of his end lines in pursuit of the vein or lode either from its apex or underground extension.

Pilot Hill & Other Lodes, In re, 35 L. D. 592, p. 593.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Mining Co. v. Tarbet, 98 U. S. 463.

Under this act an applicant can obtain patent for one ledge or lode only.

Eclipse Gold, etc., Min. Co. v. Spring, 59 Cal. 304, p. 305.

An applicant for a patent for mining claim may include surface ground lying on either or both sides of the vein or lode as part of his claim, and he may apply for the patent for the vein alone; but his rights upon the vein and in working into it are precisely the same whatever may be the form of his surface ground.

Williams, In re, Copp's Min. Dec. 27, p. 28.

The mining statute gives the owner of mining claims a right to procure a patent to as many valid mining claims as he may have the possessory right to under local laws, on compliance with the mining laws.

Irwin, In re, Copp's Min. Lands 90.

5. CONFLICTING CLAIMS AND GROUNDS—EFFECT.

Congress has the power to make the qualifications named in this section in granting mineral lands, and it has power to say that no land shall be patented unless free from all questions relating to the possession, and it has the right to say that mines shall be free from all opposing claims, and no patent shall issue for mineral to which any one other than the applicant asserts any right of possession; but it is sufficient if there is any controversy or opposing claim at the time of the final hearing and the issuing of patent.

New Idria Min. Co., In re, Copp's Min. Dec. 47, p. 52.

No patent will issue for ground in conflict with a previously patented mining claim, without a special clause excepted from the conveyance on conflict portion included in such prior patent.

Terrible v. Gunboat, Copp's Min. Lands 80, p. 81.

An applicant for a patent for a mining claim may abandon all the surface ground claimed by an adverse claimant, and thereupon his application may proceed to patent, and the relative rights to the ore at the point of intersection of the lodes separately claimed will belong to the prior location.

Sacramento Min. Co. v. Last Chance No. 2 Min. Co., 3 C. L. O. 66, p. 67.

6. NOTICE AND PLAT OR DIAGRAM—POSTING AND PUBLICATION.

Congress by this act requires that the diagram of a vein or lode of quartz or other rock in place shall be filed in the local office and posted in a conspicuous place on the claim, together with the notice of an intention to apply for a patent.

Reed, In re, Copp's Min. Lands 79.

The register is required to publish the notice and post a copy in his office for a period of 90 days.

Reed, In re, Copp's Min. Lands 79.

A notice published a month prior to the date of application and before the diagram and notices required by this act were posted on the claim and in the office of the register is not a compliance with the provisions of this act.

Red Warrior Lode, In re, Copp's Min. Lands 117, p. 118.

If the requirements as to the giving and posting of notice have been strictly observed then the want of actual notice to a person whose alleged rights may be injuriously affected affords no ground for staying the proceedings.

Reed, *In re, Copp's Min. Lands* 79.

The object of the notice and diagram is to give notice to adjoining claimants and to all parties interested as to the extent of the location and afford them opportunity to contest the right to a patent, and the notice refers to the vein as well as the surface ground, and the diagram of the surface ground must embrace the vein or lode in its general course.

McCormick v. Varnes, 2 Utah 355, p. 361.

7. EXPENSES AND FEES—DEPOSIT.

Section 3 requires the applicant for a patent to a mining claim to pay all the expenses incident to the survey of the tract, and the regulations of the Land Department require a deposit equal to the estimated cost of survey, plat, and publication before commencement of the survey, but this regulation was expressly revoked as regards field work after the enactment of the statute of May 10, 1872.

Foote, *In re*, 2 L. D. 773.

This act makes no specific provisions on the subject of fees, and accordingly the fees charged under this law must be the same as are specifically provided for like service under the homestead law.

Smith, *In re, Copp's Min.* Dec. 26.

8. EFFECT AND EXTENT OF PATENT AS A CONVEYANCE.

Patents issued under this statute described the surface areas in various forms, sometimes including around the discovery shaft an area sufficient for the convenient working of the mine, with a narrow strip leading therefrom supposed to follow the course of the vein. In other instances the patents included tracts of considerable size with a view of covering the apex of the vein, in whatever direction subsequent exploration might show it to run. In other cases the area included was limited in size and form by local rules and customs of the miners.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 64.

Yankee Mill Site, *In re*, 37 L. D. 674, p. 676.

Prior to the act of 1872 (17 Stat. 91), the miner located the lode itself with a reasonable quantity of surface for the convenient working of the claim, or the quantity of the surface fixed by local rules and regulations.

Yankee Mill Site, *In re*, 37 L. D. 674, p. 676.

Every patent issued under the authority of section 2 expressly conveys to the patentee the surface ground within the exterior boundaries of his claim, together with the right to follow the vein or lode along the course to the number of feet expressed in the patent with its dips, angles, and variations to any depth, although it enters the adjoining land.

International Min. & Exchange Co., *In re, Copp's Min.* Dec. 154.

Watson, *In re*, 1 C. L. O. 82.

Where a mining claim was located under this act and an application for patent subsequently made, and patent was issued on August 12, 1872, the patentee is entitled to all the rights which were attached to such location under this act, and to any additional rights which inured to such location under the act of May 10, 1872 (17 Stat. 91).

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 19.

If a patent for a mining claim is broader than the law, it is to that extent ineffectual, and the extent to which a patent operates as a conveyance must be determined by the statute.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 114.

The United States is the absolute proprietor of all the public land to which the Indian title has been extinguished, including the running water which is incident to the ownership of the soil over which it naturally flows, and a patent for a mining claim conveys to the patentee not only the land but also the stream of water naturally flowing through such land, and neither Territorial nor State legislatures can impair or modify the right of the Government to the primary disposal of such land.

Union Mill & Min. Co. v. Ferris, 24 Fed. Cas. 594.

A patent issued to a mining claim located before the passage of the act of May 10, 1872 (17 Stat. 91), conveys the legal title to every vein or lode of mine within the surface lines extended downward vertically.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 604.

See New Dunderberg Min. Co. v. Old, 97 Fed. 150.

A mining claim located under this act and patented after the passage of the act of May 10, 1872 (17 Stat. 91), will give the locator extralateral rights notwithstanding the lack of parallelism in the end lines of the surface claim; and the act of 1872 recognizes the distinction between claims under it and this act with reference to extralateral rights depending on the parallelism of the end lines.

Daggett v. Yreka Min., etc., Co., 149 Cal. 357, p. 373.

See Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15.

9. CONDITIONS AND EXCEPTIONS INSERTED.

The provisions of this section make it proper to recite the condition in the patent for the land adjoining, whether it is absolutely necessary to make such recital or not, as the law may protect the patentee without such recital.

Watson, In re, 2 C. L. O. 18.

10. ACCEPTING PATENT—EFFECT AND WAIVER OF RIGHTS.

A person locating a mine under the act of 1866 forfeits the rights granted thereby when he avails himself of the benefits of the act of May 10, 1872, and accepts a patent under the latter statute.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 604.

See Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147.

The location of a mining claim and the issuance of a patent under this statute is notice that the locator renounces and abandons all other rights and privileges pertaining to the discovery of his vein or lode, and under his original location he had the right to follow the course of his vein or lode, but by his location and patent he abandons his right to all the location except that within his surface boundaries, and except also the right to follow the vein or lode on its dip; and a grantee of such a patentee can not renounce such location and claim the right to follow the vein wherever it may lead, as the original locator had the right to do before he marked its boundaries and received his patent.

Larned v. Jenkins, 113 Fed. 634, p. 636.

A discoverer of a vein can not be permitted to locate his claim, present his diagram, and obtain a patent, and thereafter disregard the limitations of the grant and follow the vein or lode wherever it may happen to lead; but by the location and patent he renounces all rights to follow the vein on its course beyond the end lines of his surface location, and limits him to the sole right to follow it on its dip.

Larned v. Jenkins, 113 Fed. 634, p. 636.

See New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 606.

Wolfley v. Lebanon Min. Co., 4 Colo. 112.

Lebanon Min. Co. v. Rogers, 8 Colo. 34.

H. ADVERSE CLAIMS.

1. OBJECT OF DETERMINATION OF RIGHTS.
2. PERSON TO FILE CLAIM AND BEGIN SUIT.
3. WHAT CONSTITUTES.
4. FORM AND SUFFICIENCY.
5. STAY OF PROCEEDINGS.
6. JURISDICTION OF COURTS.

1. OBJECT OF DETERMINATION OF RIGHTS.

The object of a determination of the right by litigation where there is an adverse claim is simply to ascertain the party who has the right to claim under the laws of the State and the local rules and customs, as that person, when so found, is the party upon whom the law confers the privilege or right to purchase.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Fed. Cas. 592.
See *Trafton v. Nougues*, 24 Fed. Cas. 123.

In an application for patent for a mining claim it was necessary that there should be some provision for ascertaining whether there were adverse claims to the mining ground sought to be patented, and for determining such claims when asserted.

Brady v. Harris, 29 L. D. 426, p. 429.

Where the title to a mining claim has once been put in issue between the parties and tried and determined on an adverse claim it becomes *res adjudicata*.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Fed. Cas. 592.

2. PERSON TO FILE CLAIM AND BEGIN SUIT.

The person who sets up the adverse claim is the one who should commence the suit in the local court, unless the adverse claimant is in the evident and open possession of the premises, including the lode or vein in controversy, and in that case he should be made a defendant to the court proceedings.

Becker v. Central City, 2 C. L. O. 98, p. 99.

Where an application for a patent includes the surface and the soil, as well as the mineral, the person in possession of the surface is an adverse claimant and has an adverse claim within the meaning of this section, and is entitled to be heard in the local courts before patent issues.

Townsite of Central City, In re, 2 C. L. O. 150.

This act requires the commencement of a suit in a court within a reasonable time after the filing of an adverse claim.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 6.

A person having no interest whatever in a mine and having no authority to represent parties having an interest therein can not file an adverse claim authorizing a suspension of the proceedings under this act.

Alger Lode, In re, Copp's Min. Lands 84.

3. WHAT CONSTITUTES.

As a right of way over a mining claim is fully protected by this section, a protest on that ground is not such an adverse claim as is contemplated by section 6 of this act.

Williams, In re, Copp's Min. Lands 83.
See *Sutro, In re, Copp's Min. Lands* 98.

A controversy between an original locator of a lode claim and a subsequent locator of adjoining land, as to the possessory right of a vein or lode beneath the surface and within the surface lines of such subsequent location, but having its apex within the surface lines of such prior location, is not an adverse claim within the meaning of this section.

Chollar Potosi & Bullion v. Julia, Copp's Min. Lands 93, p. 96.

A claim of a right of way over a mining location is not an adverse claim within the meaning of this section.

Williams, In re, Copp's Min. Dec. 76.

An underground conflict, or a controversy as to conflicting rights of veins or lodes on their dip below the surface can not be adjudicated in a court under this section of the mining act, as the controversy contemplated by this section is one in which the judicial decision would control the General Land Office in its subsequent action on the application for patent, and the patent when granted would simply confirm the statutory right of the grantee to follow the vein or lode with its dips, angles, and variations to any depth and into adjoining land.

Williams, In re, Copp's Min. Dec. 27.

4. FORM AND SUFFICIENCY.

See secs. 2325, p. 375; 2326, p. 440.

This act contains no provision as to the form or manner of presenting or filing adverse claims, but the provisions in this respect were made by circular of June 25, 1867.

Sierra Nevada Silver Min. Co. v. Union Consol. Min. Co., 5 C. L. O. 163.

As no directions for presenting adverse claims are contained in the act, any action which gave notice to the local officers of a conflict in claims and clearly defined such claims was a sufficient compliance with the act to entitle a party asserting such claim to consideration as an adverse claimant.

Sierra Nevada Silver Min. Co. v. Union Consol. Min. Co., 5 C. L. O. 163.

5. STAY OF PROCEEDINGS.

The purpose of this statute was to stay proceedings only when the adverse claimant within reasonable time commences and with reasonable diligence pursues his remedy against the applicant.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 7.

The Department is only authorized to stay proceedings until the right of possession has been fully adjudicated in a court of competent jurisdiction.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 7.

When an adverse claim has been filed the proceedings in the Department must be stayed until the controversy is settled by the judgment of a court of competent jurisdiction.

Chollar Potosi & Bullion v. Julia, Copp's Min. Lands 93, p. 94.

6. JURISDICTION OF COURTS.

Congress neither by this act nor by the acts of July 9, 1870 (16 Stat. 217), or of May 10, 1872 (17 Stat. 91), attempted to confer any jurisdiction not already possessed by State courts, nor to prescribe a different form of action.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240, p. 248.

ORIGINAL MINING ACT—AMENDMENT.

16 STAT. 217, JULY 9, 1870.

MINERAL LANDS—OCCUPATION.

AN ACT To amend "An act granting the right of way to ditch and canal owners over the public lands, etc."

Be it enacted, etc. That the act granting the right of way to ditch and canal owners over the public lands, and for other purposes, approved July 26, 1866, be, and the same is hereby, amended by adding thereto the following additional sections, numbered 12, 13, 14, 15, 16, and 17, respectively, which shall hereafter constitute and form a part of the aforesaid act.

* * * * *

SEC. 12. That claims, usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent under this act, under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims: Provided, That where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands, no further survey or plat in such case being required, and the lands may be paid for at the rate of \$2.50 per acre: Provided further, That legal subdivisions of 40 acres may be subdivided into 10-acre tracts; and that two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than 10 acres each, may make joint entry thereof: And provided further, That no location of a placer claim, hereafter made shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

The first sentence of this section is the same as section 2329 R. S. For additional annotations see 2329 and 2330 R. S., pp. 507, 526.

SEC. 13. That where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim: Provided, however, That nothing in this act shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

Section 13 is now section 2332 R. S. See for further annotations, p. 547.

SEC. 14. That all *ex parte* affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated.

Section 14 is the same as the first clause of section 2335 R. S. See for annotations, p. 582.

SEC. 15. That registers and receivers shall receive the same fees for services under this act as are provided by law for like services under other acts of Congress; and that effect shall be given to the foregoing act according to such regulations as may be prescribed by the Commissioner of the General Land Office.

Fees provided for by section 2338 R. S., paragraph 9, p. 608.

SEC. 16. That so much of the act of March 3, 1853, entitled "An act to provide for the survey of the public lands in California, the granting of preemption rights, and for other purposes," as provides that none other than township lines shall be surveyed where the lands are mineral, is hereby repealed. And the public surveys are hereby extended over all such lands: Provided, That all subdividing of surveyed lands into lots less than 160 acres may be done by county and local surveyors at the expense of the claimants: And provided further, That nothing herein contained shall require the survey of waste or useless lands.

See section 2340 R. S., p. 622.

SEC. 17. That none of the rights conferred by sections 5, 8, and 9 of the act to which this act is amendatory shall be abrogated by this act, and the same are hereby extended to all public lands affected by this act; and all patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the ninth section of the act of which this act is amendatory. But nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the "Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July 25, 1866.

The middle part of section 17, making patents subject to water rights, is the same as section 2340 R. S. For annotations see section 2340 R. S.

The last sentence of section 17 is section 2344 R. S., and is the latter part of section 12 of the act of May 10, 1872 (17 Stat. 91, p. 95). For annotations of this section see section 2344 R. S., p. 629.

A. PLACER CLAIM STATUTE.

B. PLACER CLAIMS, p. 673.

C. AFFIDAVITS—AUTHORITY TO MAKE, p. 675.

D. ALIEN LAWS OF STATE—VALIDITY, p. 675.

E. LIENS PROTECTED, p. 675.

F. SUTRO TUNNEL RIGHTS PROTECTED, p. 675.

G. STATE SELECTIONS CAN NOT INCLUDE MINERAL LANDS, p. 676.

H. WATER RIGHTS, p. 676.

A. PLACER CLAIM STATUTE.

1. PURPOSE AND EFFECT.
2. CODIFICATION.
3. PROVISIONS PERPETUATED.

1. PURPOSE AND EFFECT.

This was the first placer act and its provisions are separate and distinct from the lode law, and decisions applicable to lode claims may or may not apply to placer claims.

Price v. McIntosh, 1 Alaska 286, p. 291.

No surveys of mineral lands were authorized or made until the passage of this act.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 113.

This act protected the rights conferred by sections 5, 8, and 9 of the original act of July 26, 1866 (14 Stat. 251).

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 324.

This act amended the statute of 1866 by making all placer claims, including all forms of deposit except veins of quartz or other rock in place, subject to entry and patent.

Deffeback v. Hawke, 115 U. S. 392, p. 401.

Jacob, In re, 7 C. L. O. 83.

By this amendatory act the right to locate or purchase mineral lands was extended to placer claims.

Hawke v. Deffeback, 4 Dak. 20, p. 26.

By these statutes, the plan for the disposal of public mineral lands was further developed and perfected.

Utah v. Allen, 27 L. D. 53, p. 55.

This act provided for the allowance of placer claims on lands containing valuable minerals of other forms of deposit than veins of quartz or other rock in place.

Tucker v. Florida R. etc., Co., 19 L. D. 414, p. 415.

This act made placer claims, including all forms of deposit except veins of quartz or other rock in place, subject to entry and patent under the same conditions and upon similar proceedings as those provided for vein or lode claims.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.

Salt Bluff Placer, In re, 7 L. D. 549, p. 550.

Henderson v. Fulton, 35 L. D. 652, p. 653.

Prior to the adoption of this statute it was not possible to obtain the legal title to placer mining claims, and the legislature of Montana recognized this fact in the adoption of the statute for the recovery of placer mining claims.

Horst v. Shea, 23 Mont. 390, p. 395.

This act authorizes the sale of placer lands in tracts not to exceed 160 acres and requires such tract to conform to the system of public surveys, but no provision is made for any reserved right in the Government or for the disposition of the land subject to the rights of the placer claimant, and a lode claimant gets a complete title to the lands within his patent, subject only to the express reservation stated therein as required.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 353.

2. CODIFICATION.

The provisions of this statute and of all other mining statutes as originally enacted are at present codified and embodied in sections 2318 to 2352 of the Revised Statutes.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 235.

3. PROVISIONS PERPETUATED.

This act was, with certain exceptions as to proceedings, kept in full force and effect by the act of May 10, 1872 (17 Stat. 91).

Salt Bluff Placer, In re, 7 L. D. 549.

This act, though not repealed, was subsequently amended by adding a reservation of known lodes within the boundaries of a placer claim.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350.

B. PLACER CLAIMS.

1. LOCATIONS ON SURVEYED AND UNSURVEYED LANDS.
2. SIZE AND AREA.
3. FORMS OF DEPOSIT SUBJECT TO LOCATION.
4. POSSESSORY RIGHTS.
5. PATENT—EFFECT AND ESTATE.

1. LOCATIONS ON SURVEYED AND UNSURVEYED LANDS.

While this statute remained in force, placer claims upon surveyed lands were required to be located so that their exterior limits would conform to the legal subdivisions and necessarily such claims frequently had to include within their exterior limits a quantity of nonmineral lands in order to embrace the desired mineral land and conform to the legal subdivisions, but the quantity of such nonmineral lands so included could be greatly lessened by the provision for the subdivision into 10-acre tracts, the smallest recognized by law.

Ferrell v. Hoge, 29 L. D. 12, p. 14.

The provisions of this act which are carried into section 2329 R. S. permit placer claims to be granted both upon surveyed and unsurveyed lands, but require such locations on surveyed lands to conform strictly to the legal subdivisions thereof.

Snow Flake Fraction Placer In re, 37 L. D. 250, p. 256.

This act, requiring placer locations to conform to the lines of the public surveys, is held to be unreasonable and a hardship and in contraversion of the established custom of the mining regions, and was accordingly modified in this respect by the act of May 10, 1872 (17 Stat. 91) so far as to provide for exceptional cases requiring a different regulation.

Rablin, In re, 2 L. D. 764.

Many tracts of surveyed land could not be taken as placer claims so long as the locations had to conform to the public surveys on account of the prior rights of other persons, such as lode claimants, to portions of the legal subdivisions embracing such tracts, and, accordingly, the act of May 10, 1872 (17 Stat. 91) was to enable qualified persons to locate and obtain patents for the portions not previously appropriated or reserved; but the privilege granted to lode claimants of taking their surface ground without regard to the public surveys was never extended to placer claimants.

Placer Min. Claims, In re, 10 C. L. O. p. 3.

This act was modified by the act of May 10, 1872 (17 Stat. 91) so as to provide for exceptional cases and not to compel a locator to take a particular quantity of land irrespective of its fitness for mining.

Pearsall, In re, 6 L. D. 227.

2. SIZE AND AREA.

Not until the enactment of this statute did Congress define the maximum area of placer claims or permit locators to obtain patents therefor.

Horst v. Shea, 23 Mont. 390, p. 395.

The size of placer claims located prior to the date of this act was regulated and controlled by local laws, and those located after this enactment and prior to May 10, 1872, can not exceed 160 acres.

Page, In re, Copp's Min. Lands 145.

Beauvais, In re, Copp's Min. Dec. 164.

This section fixed the limit upon the quantity of land which might be embraced in a placer claim.

Price v. McIntosh, 1 Alaska 286, p. 293.

The provisions of this act which appear in section 2330 R. S. deal with placer locations upon surveyed lands and authorize the further subdivision of established 40-acre legal subdivisions into 10-acre tracts and permit joint entry of contiguous claims of any size, although less than 10 acres, which result from the division or partial appropriation of fractional subdivisions, and fix the maximum area of a placer location at 160 acres to conform to the United States surveys.

Snow Flake Fraction Placer, In re, 37 L. D. 250, p. 256.

This act prohibits the location of any placer mining claim by any person or association of persons exceeding 160 acres, regardless of the regulations of the mining district, and provides that upon surveyed land no claim smaller than 10 acres can be patented to any person or association of persons.

Sargent, In re, Copp's Min. Dec. 40.

This act restricted placer locations to 20 acres for each claimant, but a patent to a larger amount and to any number of claimants may be issued.

Poire v. Wells, 6 Colo. 406, p. 412.

Until the adoption of this statute a placer claim in Montana might embrace, if not prohibited by rules and customs of miners, as much of the public domain as the locator could occupy, and the right to continue in possession was not dependent upon the performance of any labor.

Horst v. Shea, 23 Mont. 390, p. 396.

3. FORMS OF DEPOSIT SUBJECT TO LOCATION.

Auriferous cement claims come within the meaning of the term placer as defined in this section.

Stoddard, In re, Copp Min. Lands 83, p. 84.

Lands containing valuable deposits of borax may be entered as a placer claim under the provisions of this act.

Borax Deposits, In re, Copp's Min. Lands 100.

This act permits the patenting of lands containing valuable deposits of mineral, and lands containing valuable deposits of roofing slate may be patented under this act.

Fickett, In re, Sickels' Min. L. & D. 487.

4. POSSESSORY RIGHTS.

A placer mining claim, under this section, must be both held and worked, but no reference is made to the method of holding or working, or the manner in which the same shall be done, and there is no presumption that the method or manner of working is such as is contemplated by local laws when such local laws are inconsistent with the statute.

Gem Lode, In re, Sickels' Min. L. & D. 335, p. 336.

This act, when taken in connection with section 5 of the act of May 10, 1872 (17 Stat. 91), does not require the owner of a placer claim to make the annual expenditure thereon.

Patton, *In re*, Copp's Min. Lands 133.

5. PATENT—EFFECT AND ESTATE.

The provisions of this section, taken in connection with the provisions of the act of May 10, 1872 (17 Stat. 91), would indicate that a patent under this act for a placer claim would convey to the patentee the title to all mineral within the limits of his claim, and that no lode locations could be subsequently made within such limits, although there existed within its limits at the time of the location and of the patent a known lode.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 354.

A placer patent issued under the provisions of this section should be construed the same as a patent for a lode claim, and the law expresses no limitation upon the estate, and it has not authorized the officers of the Land Department to express in the patent any reservation; and in the absence of a located lode claim within the limits of a placer claim, and in the absence of any adverse claim, the officers of the Land Department need only ascertain that there is a placer claim which may be entered as such.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 354.

C. AFFIDAVITS—AUTHORITY TO MAKE.

See 17 Stat. 91.

This act authorizes affidavits to be made before any officer within the land district who has authority to administer oaths, and no doubt this was done for the convenience of applicants and the authority was expressly limited to the land district in order to punish those who might be guilty of perjury in making the oath.

Mattes v. Treasury Tunnel Min., etc., Co., 34 L. D. 314, p. 318.

See Dardanelles Min. Co. v. California Min. Co., Copp's Min. Dec. 161.

Under this section the affidavits relating to mining claims must be verified before a competent officer within the land district where the claim is situated.

Dardanelles Min. Co. v. California Min. Co., Sickels' Min. L. & D., 326, p. 327.

D. ALIEN LAWS OF STATE—VALIDITY.

The alien law of the Territory of Montana, by which the Territory is authorized to forfeit the title to mining claims held by aliens, is an interference with the disposal of the public mineral lands as provided by this act, the act of July 26, 1866 (14 Stat. 251), and the act of May 10, 1872 (17 Stat. 91).

Territory v. Lee, 2 Mont. 124, p. 142.

See Tibbitts v. Ah Tong, 4 Mont. 536, p. 540.

E. LIENS PROTECTED.

Parties having a lien upon any mining claim or any portion thereof are fully protected by this act, and may enforce such lien after patent is issued.

Franklin Lode, *In re*, Copp's Min. Lands 82.

F. SUTRO TUNNEL RIGHTS PROTECTED.

The provisions of this act guard the rights of the owners of the Sutro tunnel.

Sutro, *In re*, Copp's Min. Lands 98.

G. STATE SELECTIONS CAN NOT INCLUDE MINERAL LANDS.

Lands returned by the surveyor as mineral can not be selected by the State, unless its mineral character be first disproved according to the practice of the Land Office.

Lowry, *In re*, Copp's Min. Dec. 40.

H. WATER RIGHTS.

1. VESTED RIGHTS PROTECTED—MEANING.
2. MINING CLAIMS SUBJECT TO.
3. PREEMPTION AND HOMESTEAD RIGHTS SUBJECT TO WATER RIGHTS.

1. VESTED RIGHTS PROTECTED—MEANING.

The vested and accrued water rights to which patents are made subject mean the vested and accrued rights as between locators and not as between a locator and the Government.

Cave v. Tyler, 133 Cal. 566, p. 568.

Any doubt as to the meaning of the act of July 26, 1866 (14 Stat. 251), as to the water rights intended to be protected was removed by the passage of this act, and it is made clear that rights acquired either prior or subsequent to the passage of the act of July 26, 1866, were alike protected.

Jacob v. Lorenz, 98 Cal. 332, p. 336.

A patent or certificate from the State issued since this amendatory act is held subject to such vested and accrued water rights as were acquired under section 9 of the act of 1866 (14 Stat. 251).

Barnes v. Sabron, 10 Nev. 217, p. 233.

2. MINING CLAIMS SUBJECT TO.

Any placer mining claim established under this act is subject to such vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired and recognized under the original mining act of July 26, 1866 (14 Stat. 251).

Taylor, *In re*, Copp's Min. Dec. 42.

This section fully protects the owner of a mining claim in his right to the use of water for mining purposes and his right for the construction of ditches and canals used in connection with such water right.

Williams (Geo. E.), *In re*, Sickels' Min. L. & D. 466, p. 467.

3. PREEMPTION AND HOMESTEAD RIGHTS SUBJECT TO WATER RIGHTS.

All preemption or homestead patents are made subject to vested and accrued water rights used for mining and other purposes.

Sturr v. Beck, 133 U. S. 541, p. 550.

Osgood v. El Dorado Water, etc., Min. Co., 56 Cal. 571, p. 581.

Sullivan v. Northern Spy Min. Co., 11 Utah 438, p. 443.

This statute expressly provided that all homestead or preemption entries or patents should be subject to vested or accrued water rights used for mining and other purposes, acquired under section 9 of the act of July 26, 1866 (14 Stat. 251).

Hill v. Lenormand, 2 Ariz. 354, p. 358.

MINING ACT—REVISION.

17 STAT. 91, MAY 10, 1872.

AN ACT To promote the development of the mining resources of the United States.

Be it enacted, etc., That all valuable mineral deposits of lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners, in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Section 1 is identical with section 2319 R. S. For annotations see section 2319 R. S., p. 9.

SEC. 2. That mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the passage of this act, whether located by one or more persons, may equal, but shall not exceed, 1,500 feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than 300 feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing at the passage of this act shall render such limitation necessary. The end lines of each claim shall be parallel to each other.

Section 2 is identical with section 2320 R. S. For annotations see section 2320 R. S., p. 35.

SEC. 3. That the locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists at the passage of this act, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with said laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of said surface locations: Provided, That their right of possession to such outside parts of said veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as aforesaid, through

the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of said veins or ledges: And provided further, That nothing in this section shall authorize the locator or the possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Section 3 is identical with section 2322 R. S. For annotations see section 2322 R. S., p. 102.

SEC. 4. That where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within 3,000 feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of said tunnel.

Section 4 is identical with section 2323 R. S. For annotations see section 2323 R. S., p. 164.

SEC. 5. That the miners of each mining district may make rules and regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monuments as will identify the claim. On each claim located after the passage of this act, and until a patent shall have been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year. On all claims located prior to the passage of this act, \$10 worth of labor shall be performed or improvements made each year for each 100 feet in length along the vein until a patent shall have been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made: Provided, That the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after such failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required by this act, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent coowner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for 90 days, and if at the expiration of 90 days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion to comply with this act, his interest in the

claim shall become the property of his coowners who have made the required expenditures.

Section 5 is identical with section 2324 R. S. For annotations see section 2324 R. S., p. 177.

SEC. 6. That a patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this act, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this act, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted as aforesaid, and shall file a copy of said notice in such land office, and shall thereupon be entitled to a patent for said land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of 60 days, in a newspaper to be by him designated as published nearest to said claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the 60 days of publication, shall file with the register a certificate of the United States surveyor general that \$500 worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the 60 days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during said period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the 60 days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of \$5 per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with this act.

Section 6 is identical with section 2325 R. S. For annotations see section 2325 R. S., p. 289.

SEC. 7. That where an adverse claim shall be filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within 30 days after filing

his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, together with the certificate of the surveyor general that the requisite amount of labor has been expended, or improvements made thereon, and the description required in other cases, and shall pay to the receiver \$5 per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it shall appear from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the surveyor general, whereupon the register shall certify the proceedings and judgment roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Proof of citizenship under this act, or the acts of July 26, 1866, and July 9, 1870, in the case of an individual, may consist of his own affidavit thereof, and in case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief, and in case of a corporation organized under the laws of the United States, or of any State or Territory of the United States, by the filing of a certified copy of their charter or certificate of incorporation; and nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.

Section 7 is identical with section 2326 R. S. For annotations see section 2326 R. S., p. 429. The closing part of section 7 is the same as section 2321 R. S., p. 99.

SEC. 8. That the description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued as aforesaid for claims upon unsurveyed lands, the surveyor general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

Section 8 is the same as the first part of section 2327 R. S. For annotations see section 2327 R. S., p. 504.

SEC. 9. That sections 1, 2, 3, 4, and 6 of an act entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July 26, 1866, are hereby repealed, but such repeal shall not affect existing rights. Applications for patents for mining claims now pending may be prosecuted to a final decision in the General Land Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this act; and all patents for mining claims heretofore issued under the act of July 26, 1866, shall convey

all the rights and privileges conferred by this act where no adverse rights exist at the time of the passage of this act.

The first sentence in this section repeals sections 1, 2, 3, 4, and 6 of the act of July 26, 1866 (14 Stat. 251), p. 632.

Section 9, after the repealing sentence, is the same as section 2328 R. S., p. 681.

SEC. 10. That the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July 9, 1870, shall be and remain in full force, except as to the proceedings to obtain a patent, which shall be similar to the proceedings prescribed by sections 6 and 7 of this act for obtaining patents to vein or lode claims; but where said placer claims shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims hereafter located shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than 20 acres for each individual claimant, but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands: Provided, That proceedings now pending may be prosecuted to their final determination under existing laws; but the provisions of this act, when not in conflict with existing laws, shall apply to such cases: And provided also, That where by the segregation of mineral land in any legal subdivision, a quantity of agricultural land less than 40 acres remains, said fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

Section 10 is identical with section 2331 R. S. For annotations see section 2331 R. S., p. 534.

SEC. 11. That where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case (subject to the provisions of this act and the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July 9, 1870), a patent shall issue for the placer claim, including such vein or lode, upon the payment of \$5 per acre for such vein or lode claim, and 25 feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of \$2.50 per acre, together with all costs of proceedings; and where a vein or lode, such as is described in the second section of this act, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

See section 2333 R. S., p. 554.

Section 11 is identical with section 2333 R. S. For annotations see section 2333 R. S., p. 554.

SEC. 12. That the surveyor general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining

claims. The expenses of the survey of vein or lode claims, and the survey and subdivisions of placer claims into smaller quantities than 160 acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this act; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by said applicant for publication and surveys, together with all fees and money paid the register and the receiver of the Land Office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office. The fees of the register and the receiver shall be \$5 each for filing and acting upon each application for patent or adverse claim filed, and they shall be allowed the amount fixed by law for reducing testimony to writing, when done in the Land Office, such fees and allowances to be paid by the respective parties; and no other fees shall be charged by them in such cases. Nothing in this act shall be construed to enlarge or affect the rights of either party in regard to any property in controversy at the time of the passage of this act, or of the act entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July 26, 1866, nor shall this act affect any right acquired under this act; and nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the act entitled "An act granting to A. Sutro the right of way, and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July 25, 1866.

The first half of section 12 is the same as section 2334 R. S. For annotations see section 2334 R. S., p. 577.
The last sentence of section 12 is substantially the same as section 2344 R. S. For annotations see section 2344 R. S., p. 629.

SEC. 13. That all affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the Land Office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least 10 days to the opposing party; or if said party can not be found, then by publication of at least once a week for 30 days in a newspaper, to be designated by the register of the Land Office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Section 13 is identical with section 2335 R. S. For annotations see section 2335 R. S., p. 582.

SEC. 14. That where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection: Provided, however, That the subsequent location shall have the right of way through said space of intersection for the purposes of the convenient working of the said mine: And provided also, That where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Section 14 is identical with section 2336 R. S. For annotations see section 2336 R. S., p. 586.

SEC. 15. That where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable under this act to veins or lodes: Provided, That no location hereafter made of such nonadjacent land shall exceed 5 acres, and payment for the same must be made at the same rate as fixed by this act for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

Section 15 is identical with section 2337 R. S. For annotations see section 2337 R. S., p. 593.

SEC. 16. That all acts and parts of acts inconsistent herewith are hereby repealed: Provided, That nothing contained in this act shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws.

A. MINING STATUTE.

B. MINERAL LANDS, p. 688.

C. MINING CLAIMS, p. 691.

D. PLACER CLAIMS, p. 706.

E. MILL SITES, p. 709.

F. APPLICATION FOR PATENT, p. 710.

G. ADVERSE CLAIMS, p. 714.

H. PATENT, p. 721.

I. AMENDMENTS TO 17 STAT. 91, p. 722.

A. MINING STATUTE.

1. CONSTRUCTION.

2. CODIFICATION.

3. IMPROVED SYSTEM PROVIDED.

4. DISPOSAL OF MINERAL LANDS PROVIDED.

5. REVISION OF PRIOR ACTS.

6. PRIOR ACTS CONTINUED IN FORCE.

7. RIGHTS PROTECTED.

8. REPEALING EFFECT AND EXTENT.

9. LIMITATION ON EXISTING RIGHTS.

1. CONSTRUCTION.

This and other statutes relating to the public mineral lands should be liberally construed so as to facilitate the sale of such lands.

Diamond Lands, *In re, Copp's Min. Lands* 88, p. 89.

As an independent act this statute must be construed by itself unaided by other acts unless by analogy.

Coal Lands, *In re, Copp's Min. Lands* 345.

Congress knew at the time of the adoption of this statute the evils arising from the application of the old rule relative to the acquisition of mining rights.

Watervale Min. Co. v. Leach, 4 *Ariz.* 34, p. 58.

The rights of parties to lode claims located subsequently to the adoption of this statute must be determined by its construction.

Frohner v. Rodgers, 2 *Mont.* 179, p. 185 (dissenting opinion).

The history of mining has proven that this act and the amendments thereto do not always afford a clear and adequate solution for some of the practical conditions that arise in the development of the mining industry.

King v. Amy Silversmith Consol. Min. Co., 9 *Mont.* 543, p. 564.

The validity of a mining claim located on the 1st day of January, 1884, depends upon a compliance by the locator with the requirements of this act.

Daggett v. Yreka Min., etc., Co., 149 *Cal.* 357, p. 361.

2. CODIFICATION.

The provisions of this statute and of all other mining statutes as originally enacted are at present codified and embodied in sections 2318 to 2352 of the Revised Statutes.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 *L. D.* 233, p. 235.

Union Oil Co., *In re* (on review), 25 *L. D.* 351, p. 352.

Coal Lands, *In re, Copp's Min. Lands* 345.

Section 3 is the same as section 2322 of the Revised Statutes.

Branagan v. Dulaney, 8 *Colo.* 408, p. 409.

Section 5 of this act is section 2324 of the Revised Statutes.

Sweet v. Weber, 7 *Colo.* 443, p. 445.

Section 10 is now section 2331 of the Revised Statutes.

Price v. McIntosh, 1 *Alaska* 286, p. 294.

This act is substantially incorporated in the Revised Statutes, and applies to the issuance of patents for mineral lands situated on the unsurveyed as well as on the surveyed public domain.

Phosphate Deposits, *In re*, 17 *C. L. O.* 74.

3. IMPROVED SYSTEM PROVIDED.

The system of locating and obtaining title to mining claims adopted by this statute is considered a great improvement on the system which it displaced, and while mineral veins and ledges are not always regular and do not have perfectly straight courses and present irregularities of strike and dip, yet they are approximately the ideal vein that Congress had in view sufficiently near to admit of easy application of the law in ordinary cases of conflicting claims.

Gleeson v. Martin White Min. Co., 13 *Nev.* 442, p. 459.

So far from restricting the rights of miners the new law has very greatly enlarged them and at the same time has made them vastly more certain and secure.

Gleeson v. Martin White Min. Co., 13 *Nev.* 442, p. 460.

This act is the foundation of the existing system of mining laws by which citizens of the United States acquired rights to public mineral lands, and the provisions of that act are now found in sections 2318 to 2336 of the Revised Statutes.

Reynolds v. Iron Silver Min. Co., 116 U. S. 687, p. 693.

Congress, in disposing of its mineral lands, adopted a radically different system from that existing on the Pacific coast, under which a vein or lode can be located by means of a surface claim and held only to the extent that it is included within the surface lines of the location.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 459.

4. DISPOSAL OF MINERAL LANDS PROVIDED.

By this statute all valuable mineral deposits in public lands were declared to be free and open to exploration and purchase under regulations prescribed by law and according to local laws and rules of miners in mining districts.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 672.

This act changed the language of all existing statutes so as to apply to all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, and opened all mineral lands to entry and purchase the same as agricultural lands, but under an entirely different system.

Alabama, In re, 6 L. D. 493, p. 500.

Henley, In re, 9 L. D. 178, p. 179.

This act provides for the survey, entry, and patenting of mining claims.

Jacob, In re, 7 C. L. O. 83.

By this act the Government has opened to exploration and purchase by its citizens, and those who have declared their intention to become such, the public mineral land, and will grant to the successful explorer the right to take and possess the mineral within certain prescribed limits upon compliance with the terms and conditions of the grant and local rules and regulations.

Patterson v. Tarbell, 26 Oreg. 29, p. 32.

5. REVISION OF PRIOR ACTS.

This act practically revised and consolidated the original act of 1866 and the amendatory act of 1870 (16 Stat. 217), and made all mineral deposits in the public lands, whether surveyed or unsurveyed, free and open to exploration and purchase, and and these provisions were carried into section 2319 of the Revised Statutes.

Hawke v. Deffebach, 4 Dak. 20, p. 26.

6. PRIOR ACTS CONTINUED IN FORCE.

This act provides that the act of July 9, 1870 (16 Stat. 217), shall continue in force, except as to proceedings to obtain a patent.

Patton, In re, Copp's Min. Lands 133.

Section 10 provides that the act of July 9, 1870 (16 Stat. 217), shall, with certain exceptions, remain in full force.

Salt Bluff Placer, In re, 7 L. D. 549.

This section prevents the repeal of section 2 of the act of July 26, 1866 (14 Stat. 251), from affecting any existing right.

International Min. & Exchange Co., In re, Copp's Min. Dec. 154.

7. RIGHTS PROTECTED.

Section 16 expressly declares that nothing in the act shall be construed to impair in any way rights of interests in mining property acquired under existing laws, and where an application for patent was pending under the act of July 26, 1866 (14 Stat. 251), at the date of the enactment of this statute, none of the rights which the applicant had acquired by virtue of compliance with such former act were in any manner affected or impaired, and among such acquired rights was the right to follow the vein or lode with its dips and angles to any depth, although entering adjoining lands.

International Min. & Exchange Co., In re, Copp's Min. Dec. 154, p. 155.
Lee v. Stahl, 13 Colo. 174, p. 176.

Section 12 of this act provides that the act shall not affect any right acquired under the act of July 26, 1866 (14 Stat. 251).

International Min. & Exchange Co., In re, Copp's Min. Dec. 154.

A vested right in a valid mining location is protected by this statute.

Blake v. Butte Silver Min. Co., 2 Utah 54, p. 57.

This section prevents the impairment in any way of the mining rights or interests acquired under existing laws.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 54.

The rights of claimants under this act apply equally to claims under the act of July 26, 1866 (14 Stat. 251).

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101.
California, In re, Copp's Min. Lands 340.

Any local law, subsequent to the enactment of this statute, attempting to enlarge mining claims located prior to its enactment beyond that permitted by laws in force when the location was made and at the time of the adoption of this act, would be inconsistent with the act and therefore nugatory.

Seymour (John), In re, Sickels' Min. L. & D. 60, p. 61.

This act intended to preserve to the owners of mining claims whatever rights they had acquired by location under former laws, but not to enlarge such claims, and it also defined the rights which might be acquired by subsequent locations.

Seymour (John), In re, Sickels' Min. L. & D. 60, p. 61.

While Congress could have required parties who had equitable rights to patents to mining claims to cause adjustments of their surface lines, so as to make the end lines parallel before patent would issue, on pain of losing all extralateral rights, yet no such provisions are found in the act, but the rights of locators under former laws are expressly confirmed.

Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147, p. 153.
Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 25.

This act expressly provides that nothing therein shall be construed to impair rights or interests in mining property acquired under existing laws.

Eclipse Gold, etc., Min. Co. v. Spring, 59 Cal. 304, p. 305.

This, as well as the former statute, evinces an intention to favor and regard diligent discoverers and developers of mines, and a prospector who climbs the mountain and discovers a valuable mine should be and is protected, encouraged, and rewarded for his enterprise, his toil, and his skill.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 50.

These acts of Congress relating to mining locations were passed for the protection of the miners and the terms "vein" and "lode" were employed in the sense in which miners had used them, uncontrolled by scientific definitions.

Hayes v. Lavagnino, 17 Utah 185, p. 195.

The rights of parties who initiated claims under the act of July 26, 1866 (14 Stat. 251), and which were not perfected until after its repeal, are protected, but the question as to whether such rights exist is one of fact and must be affirmatively shown.

Empire Gold & Silver Min. Co., In re, 5 C. L. O. 50.

A valid and existing location was protected by this act against the repeal of the act of 1866, and granted to the locator of a mining location the exclusive right of possession and enjoyment of the surface within the lines of the location, as well as all veins or ledges with their extralateral rights, and these rights continued so long as the locator complied with the laws and regulations governing the possessory title to mining claims.

Brady v Harris, 29 L. D. 426, p. 428.

8. REPEALING EFFECT AND EXTENT.

This statute repeals certain sections of the act of 1866, and instead provides that all valuable mineral deposits in the public lands are free and open to exploration and purchase, subject to certain conditions.

Deffeback v Hawke, 115 U. S. 392, p. 401.

This act repeals several sections of the act of 1866, and in their places declares that all valuable mineral deposits upon the public lands are free and open to exploration and purchase.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.

This act expressly repeals section 2 of the act of July 26, 1866 (14 Stat. 251).

International Min. & Exchange Co., In re, *Copp's Min. Dec.* 154.

This act repeals sections 1, 2, 3, 4, and 6 of the act of 1866, but the repeal does not affect existing rights, and the act permits pending applications to be prosecuted to final decisions.

Brady v Harris, 29 L. D. 426, p. 428.

The repealing clause of this act was not to impair any rights or interests in mining property acquired under existing laws.

Brady v Harris, 29 L. D. 426, p. 428.

This act repeals the act of July 26, 1866 (14 Stat. 251), so far as the latter related to the manner and extent of locations, but existing rights are not affected.

Sacramento Min. Co. v. Last Chance No. 2 Min. Co., 3 C. L. O. 66.

This statute expressly provides that the repeal of certain sections of the act of 1866 should not affect existing rights and that pending applications for patents for mining claims might be prosecuted to a final decision and patents issued accordingly.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 603.

Brady v Harris, 29 L. D. 426, p. 429.

This section repealed section 3, together with other sections of the act of 1866 (14 Stat. 251), but continued the requirement that the applicant should pay the expenses of survey, and was intended to protect applicants for mining patents from unjust charges for survey and publication, and authorized them to contract personally with a deputy surveyor for his services upon such terms as they might agree upon, and this provision is still in force.

Foote, In re, 2 L. D. 773.

This act repeals in part the act of July 26, 1866 (14 Stat. 251), and permits 1,500 linear feet to be located as one claim on a lode, whether improved by an individual or an association of persons jointly, but no claim can exceed 1,500 feet.

Douglas, In re, *Copp's Min. Dec.* 136, p. 138. *Sickels's Min. L. & D.* 78.

So long as the regulations under this act were not given a retroactive effect and did not destroy existing mining rights or interests, or impose burdens thereon not embraced

within the power of regulation expressly reserved by the act of 1866 (14 Stat. 251), but were reasonably calculated to preserve and to protect all rights or interests acquired under that act, then such rights or interests were not impaired by the repeal of the old regulations or by the adoption of the new one.

Brady v. Harris, 29 L. D. 426, p. 430.

9. LIMITATION ON EXISTING RIGHTS.

Section 2, instead of extending the rights of locators under the act of July 26, 1866 (14 Stat. 251), along the lode, expressly limits them in that respect to the rights the locators had under previous laws.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 24.

See Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147, p. 155.

The provisions of section 3 grant no rights additional to those given and are express limitations upon the rights already given, and do not confer ownership to all within the planes described, and provide, in effect, that no locator may pass beyond such planes.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 20.

B. MINERAL LANDS.

1. VALUABLE FOR MINERALS—MEANING.
2. MINERALS INCLUDED—GENERALLY.
3. PARTICULAR MINERALS INCLUDED.
4. SALT AND SALINES EXCEPTED.
5. EXCEPTED FROM RAILROAD GRANTS.
6. PORTERFIELD WARRANTS NOT RECEIVABLE.
7. HEARING TO DETERMINE CHARACTER.

1. VALUABLE FOR MINERALS—MEANING.

See secs. 2302, p. 840; 2318, p. 6; 2319, p. 15.

Section 1 makes all valuable mineral deposits in lands belonging to the United States free and open to exploration and purchase, and the lands opened to occupation and purchase, as prescribed by law.

Salt Bluff Placer, In re, 7 L. D. 549.

Diamond Lands, In re, Copp's Min. Lands 88, p. 89.

McFeters v. Pierson, 15 Colo. 201, p. 204.

Belk v. Meagher, 3 Mont. 65, p. 78.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 412.

This act changed the language of the act of July 26, 1866 (14 Stat. 251), and made the statute apply to all valuable mineral deposits in lands belonging to the United States, whether surveyed or unsurveyed; and under this statute all mineral lands were open to entry and purchase the same as agricultural lands, except under a different system.

Alabama, In re, 15 C. L. O. 7, p. 9.

Where valuable mineral deposits are found in such quantity and quality as to render the land site to be patented more valuable on this account than for purposes of agriculture, then such land may be patented under the mining laws.

Rollins, In re, Copp's Min. Lands 333.

Whatever is recognized as a mineral by the standard authorities and is found in such quantity and quality as to render the land more valuable on that account than for agriculture is a valuable mineral deposit within the purview of this act.

Parks v. Hendsch, 12 L. D. 100, p. 101.

Maxwell v. Brierly, 10 C. L. O. 50.

See Hooper, In re, 1 L. D. 560.

Lands that do not contain valuable mineral deposits in quantity and quality sufficient to render the land more valuable on this account than for agriculture can not be patented under this act.

Rollins, In re, 1 C. L. O. 19.

Mineral lands within the meaning of this statute are those containing valuable mineral deposits, but the sale of the land as mineral is not conclusive of the fact that it contains valuable deposits, but this question must be determined from the evidence and not from the grant.

Twin Lakes Hydraulic Gold Min. Syndicate v. Colorado, etc., R. Co., 16 Colo. 1, p. 5.

2. MINERALS INCLUDED—GENERALLY.

The mineral deposits included in this section comprise all the substance which now form, or which once formed, part of the solid body of the earth, and are destitute of or incapable of supporting animal or vegetable life.

Mineral Lands, In re, 14 Op. Atty. Gen. 115.

A mineral is defined to be a fossil or what is dug out of the earth, and may include all substances which now form, or which once formed, part of the solid body of the earth, embracing as well the bare granite of the mountain as the hidden diamonds and metallic ores.

Diamond Lands, In re, Copp's Min. Lands 89.

Under this act whatever is recognized as mineral by standard authorities and is found in such quantity and quality as to render land more valuable on this account than for agriculture is subject to location under the mining laws.

Maxwell v. Brierly, In re, 10 C. L. O. 50.

The rights of coal claimants under this act are the same as mineral claimants under the act of July 26, 1866 (14 Stat. 251).

California, In re, Copp's Min. Lands 340.

See Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101.

Prior to the passage of this act lands containing deposits of iron ore were disposed of for cash at private entry the same as agricultural lands, and Congress subsequently placed this construction upon the act.

Clements, In re, Copp's Min. Dec. 214.

The act of 1873 (17 Stat. 465), excepting mines of iron and coal in Michigan, Wisconsin, and Minnesota, would have been wholly unnecessary to accomplish the exclusion of such coal and iron mines if this mining statute was not intended to embrace any minerals except those of the metallic class.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 240.

3. PARTICULAR MINERALS INCLUDED.

See secs. 2318, p. 8; 2319, p. 17; 2320, p. 80.

Lands containing asphaltum, borax, auriferous cement, fire clay, gypsum, kaolin, limestone, mica, marble, petroleum, slate, and other substances, making them more valuable because of such minerals and substances than for agriculture, come within the purview of this act.

Parks v. Hensch, 12 L. D. 100, p. 101.

See Conlin v. Kelly, 12 L. D. 1.

Maxwell v. Brierly, 10 C. L. O. 50.

Lands valuable on account of aluminum, asphalt, borax, carbonate of soda, and nitrate of soda, as well as all valuable mineral deposits may be applied for and patented under the provisions of this act.

Union Oil Co., In re, (on review), 25 L. D. 351, p. 354.

Borax Deposits, In re, Copp's Min. Lands 100.

Coal, whether anthracite, bituminous, lignite, or cannel, diamonds, fire clay, iron, lead and tin, mica, petroleum, and roofing slate, are valuable mineral deposits within the meaning of this statute.

Henderson v. Fulton, 35 L. D. 652, p. 653.

Arnold, In re, 2 C. L. O. 131.

Diamond Lands, In re, Copp's Min. Lands 88, p. 89.

Billings, In re, Copp's Min. Lands 121.

Register and Receiver, In re, Copp's Min. Lands 345.

Stratton (Surveyor-General), In re, Copp's Min. Lands 160.

Clements, In re, Copp's Min. Dec. 214.

Shaw, In re, Copp's Min. Dec. 235.

Fickett, In re, Sickels' Min. L. & D. 487.

Mineral Lands, In re, 14 Op. Atty. Gen. 115.

4. SALT AND SALINES EXCEPTED.

Lands chiefly valuable for salt deposits are not subject to entry as a placer mine. Southwestern Min. Co. In re, 14 L. D. 597.

Lands which are saline in character are not subject to entry as mineral lands under this statute.

Salt Bluff Placer, In re, 7 L. D. 549, p. 550.

No authority exists under this act for the disposal of saline lands or salt springs belonging to the United States, and such lands are not subject to entry as a placer claim.

Salt Bluff Placer, In re, 7 L. D. 549.

Where the presence of salt springs and the deposit of salt renders the land more valuable on this account than for agricultural purposes, such lands may be patented under this act.

Rollins, In re, Copp's Min. Lands 333.

5. EXCEPTED FROM RAILROAD GRANTS.

All mineral lands are excepted from the grants to different railroad companies, except lands containing coal and iron.

Arnold, In re, 2 C. L. O. 131.

Under this act mineral lands are subject to disposal only to parties who show compliance with its terms and on payment of the proper sum.

Porterfield Scrip, In re, 3 C. L. O. 83.

These statutes are considered in connection with the construction placed upon the act making a railroad grant.

Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 430.

6. PORTERFIELD WARRANTS NOT RECEIVABLE.

See Private land claims, 12 Stat. 836, p. 1078.

Mineral lands the minimum price of which exceeds \$1.25 per acre can not be legally located by the Porterfield warrants as provided in the act of April 11, 1860 (12 Stat. 836), being an act for the relief of the legal representatives of Charles Porterfield, deceased, and any patent issued for such mineral land will be canceled.

Weise, In re, 2 C. L. O. 130.

7. HEARING TO DETERMINE CHARACTER.

See sec. 2302, p. 843.

Under the supervisory power conferred upon the Land Department, the Commissioner is authorized to order hearings for the purpose of ascertaining the mineral char-

acter of lands or any further facts upon which it is necessary to render an intelligent decision.

Wood v. Seymour, 4 C. L. O. 178.

See Central Pac. R. Co., In re, 5 C. L. O. 2.

While not expressly authorized under this act, yet the Commissioner of the General Land Office has authority to order a hearing under the mining laws, when it is necessary to ascertain facts upon which to base an intelligent decision.

Woodville Placer, In re, Copp's Min. Lands 224.

C. MINING CLAIMS.

1. LOCAL REGULATIONS RECOGNIZED AND AUTHORIZED.
2. LOCATION AUTHORIZED AND TITLE PERMITTED.
3. WHAT CONSTITUTES.
4. LOCATION ON VEIN OR LODE.
5. SURFACE GROUND WITH VEIN OR LODE.
6. DISCOVERY ESSENTIAL.
7. MARKING ON GROUND.
8. DIMENSIONS AND AREA.
 - a. LENGTH ON LODE.
 - b. WIDTH OF CLAIM.
 - c. LOCAL REGULATIONS AS TO AREA.
9. SURFACE BOUNDARY LINES DETERMINE LOCATOR'S RIGHTS.
10. PARALLELISM OF END LINES.
11. REPRESENTATION WORK.
 - a. AMOUNT REQUIRED.
 - b. TIME OF MAKING—EXTENSION.
 - c. WORK ON TUNNEL.
12. EXTRALATERAL RIGHTS.
13. LOCATION.
 - a. EFFECT AS A GRANT.
 - b. BY AGENT.
 - c. EFFECT AS NOTICE.
 - d. EFFECT AS PROPERTY.
14. LOCATOR AND DISCOVERER PROTECTED.
15. SURVEY AND DESCRIPTION.
16. RECORD OF LOCATION—CONTENTS.
17. LOCATION NOTICE—POSTING.
18. POSSESSORY RIGHTS.
 - a. NATURE AND ESTATE.
 - b. OWNER MAY PROTECT BY SUIT.
 - c. EVIDENCE OF TITLE.
19. FORFEITURE.
20. RELOCATION UNDER THIS ACT—EFFECT.
21. RELOCATION—NOTICE.
22. INTERSECTING VEINS—RIGHTS OF LOCATORS.
23. TUNNEL LOCATIONS.

1. LOCAL REGULATIONS RECOGNIZED AND AUTHORIZED.

The local regulations permitted by section 5 have constituted the miners' laws and have formed the basis of miners' titles since the first discoveries of the precious metals in the public domain.

Douglas, *In re, Copp's Min.* Dec. 136, p. 137.

Up to the time of the enactment of this statute there was generally no limit to the power of the local legislatures known as miners' meetings, except the general principles of law, and up to this time actual possession of a mining claim was good if it did not claim more than the law allowed.

Rush v. French, 1 Ariz. 99, p. 148.

Local rules and regulations of miners adopted May 1, 1872, were superseded by this act to the extent of any conflict, but were continued in force only as a means of protecting a vein discovered during the time reasonably necessary for tracing its course and marking the boundaries of the location, and if a discoverer chose to mark his location at the beginning or actually did so before any adverse claim was made, his failure to post a record or notice would count for nothing.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 465.

Any regulation in conflict with this act must fall.

Jenny Lind v. Eureka Min. Co., *Copp's Min. Lands* 124, p. 129.

This act assumes that territorial legislatures had the power to legislate on the matter of regulating mining claims.

O'Donnell v. Glenn, 8 Mont. 248, p. 258.

Under this statute miners may adopt regulations requiring mining claims to be located by posting notice at the point of discovery, and such notice must be recorded within 15 days to hold the claim for 100 days within which time a certain amount of work was to be done on the ground in order to hold the claim for one year, and giving each locator 50 feet of the surface on each side of his vein or lode.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 450.

Nothing in this act prevents a local legislature from requiring a declaratory statement to a mining claim to be sworn to.

O'Donnell v. Glenn, 8 Mont. 248, p. 256.

See Wenner v. McNulty, 7 Mont. 30, p. 36.

Flick v. Gold Hill, etc., Min. Co., 8 Mont. 298, p. 303.

2. LOCATION AUTHORIZED AND TITLE PERMITTED.

By this act not only the veins and lodes were opened to exploration and purchase but the land in which they were found to the extent allowed by the United States mining laws and the rules and regulations of miners, and the act permitted a mining locator to obtain absolute title if desired.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 62 (dissenting opinion).

3. WHAT CONSTITUTES.

A lode mining claim under this act consists of a tract of land with defined surface boundaries, including all lodes, veins, and ledges throughout their entire depth, the top or apex of which lies inside of a surface line extended downward vertically, although such veins may in their downward course extend outside of the vertical side lines of the surface location.

Paul v. Cragnaz, 25 Nev. 293, p. 327.

"Location," as used in the act of 1866 (14 Stat. 251) and in this act, refers to the surface ground as well as to the vein or lode.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

Under this act discovery and appropriation are both conditions precedent to the right to occupy the public mineral lands as a mining claim, and the right to possession or occupation depends upon a valid location, and a location is made by marking the boundaries of the claim on the ground so that they can be readily traced.

Patterson v. Tarbell, 26 Oreg. 29, p. 32.

4. LOCATION ON VEIN OR LODE.

Section 2 provides for locations upon veins or lodes of quartz or other rock in place. Salt Bluff Placer, In re, 7 L. D. 549.

Under this statute a patentee is entitled to all the ledges having their apexes within the surface lines of the land granted to him.

Eclipse Gold, etc., Min. Co. v. Spring, 59 Cal. 304, p. 305.

It was the intent of Congress by this act to give to the discoverer of a vein or lode not simply the possession of the lode, but of all veins, lodes, and ledges that might be found within his surface boundaries.

Frohner v. Rodgers, 2 Mont. 179, p. 186.

The locator of a mining claim under this act is entitled to all veins or lodes having their top or apexes inside his surface lines, while under the act of July 26, 1866 (14 Stat. 251), the locator was entitled to but one vein without regard to a surface location.

Blake v. Butte Silver Min. Co., 2 Utah 54, p. 57.

Eclipse Gold, etc., Min. Co. v. Spring, 59 Cal. 304, p. 305.

Prior to the enactment of this statute the rights of a locator were practically limited to the vein or lode upon which his location was made, and such vein or lode was the thing granted and the rights to surface ground only attached for the purpose of convenient working of the vein located, and no rights to any other vein were given; but this act made a marked change, and the surface area controlled by a location was definitely fixed and the locators' rights were no longer limited to the one vein.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 12.

No definitions of "vein" or "lode" are given in this act or in the act of July 26, 1866 (14 Stat. 251), but it was not the intention of the framers of this act that purely scientific definitions should be applied in giving them effect.

Hayes v. Lavagnino, 17 Utah 185, p. 195.

Mining claims located on lodes or veins discovered since the enactment of this statute are governed by the act.

Reed (surveyor general), In re, *Copp's Min. Lands* 124.

5. SURFACE GROUND WITH VEIN OR LODE.

The right of a lode locator to surface ground under this act is dependent upon his right to the principal lode, and his right to other lodes within his surface limits is equally dependent, and his rights are enlarged over those afforded by the prior statute in order to prevent controversies constantly arising respecting veins or lodes connected or associated with the vein or lode claimed.

Patterson v. Hitchcock, 3 Colo. 533, p. 544.

See *Wolfey v. Lebanon Min. Co.*, 4 Colo. 112.

The principal lode constitutes the measure of the miner's right to the surface ground, and the surface ground when thus determined, in turn, constitutes the measure of his right to other veins, subject to the limitations of the law.

Patterson v. Hitchcock, 3 Colo. 533, p. 544.

This section defines the extent and area of the surface of a mining location.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 52.

While under the old law the miner located the lode, yet under this act he must locate a piece of land containing the top or apex of a lode; but the vein is still the principal thing, and it is for the sake of the vein that the location is made.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, p. 508.

6. DISCOVERY ESSENTIAL.

See secs. 2319, p. 23; 2320, p. 64; 2322, p. 108; 2329, p. 511.

The validity of a mining claim located since May 10, 1872, depends upon the substantial compliance by the locator with the essential requirements of this act; among these are the discovery of a vein or lode, the marking of the location so that its surface boundaries can be readily traced, and the parallelism of the end lines.

Daggett v. Yreka Min., etc., Co., 149 Cal. 357, p. 361.

The discovery and location of a mining claim are the first steps taken to initiate a right thereto and these form the basis upon which rest all subsequent proceedings.

City Rock and Utah Claimants v. Pitts, 1 C. L. O. 146.

A discovery entitles the locator to a mining claim embracing such discovery not to exceed 1,500 feet in length by 600 feet in width, and within these limits, where the boundaries are properly made and recorded, the grant of the Government attaches, and third persons must take notice; but third persons are not required to look for stakes or boundaries beyond the utmost limits of a location as authorized by this act.

Hauswirth v. Butcher, 4 Mont. 299, p. 307.

This act of Congress and the laws of Oregon do not provide any specific time after discovery within which a location or appropriation shall be made, and until the boundaries are distinctly marked on the ground and notice posted on the vein or lode a location is not complete.

Patterson v. Tarbell, 26 Oreg. 29, p. 33.

7. MARKING ON GROUND.

This act requires the locations to be distinctly marked on the ground, so that the boundaries of the claim can be readily traced, and these provisions must be strictly complied with.

Dephanger, In re, 1 L. D. 581.

Locators of mining claims must distinctly mark their locations on the ground so that their boundaries can be readily traced to entitle them to maintain possession of their claims.

Holland v. Mt. Auburn Gold, etc., Min. Co., 53 Cal. 149, p. 151.

Gelcich v. Moriarity, 53 Cal. 217, p. 220.

The object in requiring the location of a mining claim to be marked upon the ground is to fix the claim and prevent floating or swimming, so that third persons may be able to ascertain exactly what has been appropriated and make their locations accordingly.

Hauswirth v. Butcher, 4 Mont. 299, p. 308.

Gleason v. Martin White Min. Co., 13 Nev. 442.

The markings of the survey of a mining claim upon the ground must conform to the location notice and record.

City Rock and Utah Claimants v. Pitts, 1 C. L. O. 146.

Under this act it is a sufficient marking of a mining claim on the ground to set two stakes, a monument at the point of discovery, and a stake at each end of the claim in a line with such monument and the croppings of the vein and discovery point, to-

gether with a location notice in connection with such monument at the discovery point.

Gleason v. Martin White Min. Co., 13 Nev. 442, p. 456.
See Holland v. Mt. Auburn Gold, etc., Min. Co., 53 Cal. 149.

8. DIMENSIONS AND AREA.

a. LENGTH ON LODE.

The size of a mining claim discovered since May 10, 1872, both as to length and width, is limited by this act.

Shaw, In re, Copp's Min. Dec. 235.

This act provides that locations made subsequent to its passage shall be only 1,500 feet in length and not to exceed 300 feet in width on each side of the vein.

Seymour (Henry), In re, Sickels' Min. L. & D., 60.
San Xavier Mine, In re, Copp's Min. Lands 119, p. 120.

This act authorizes the location of a claim 1,500 feet in length along the vein or lode and not more than 300 feet on each side of the middle of the vein at the surface.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.

This act permits a mining claim to be 1,500 feet in length, and a location of 2,000 feet can not be sustained to the extent of 1,500 feet, as the 1,500 feet can not be shifted from one end to the other of a 2,000-foot claim to cover the discovery of a third person within such 2,000-foot location.

Hauswirth v. Butcher, 4 Mont. 299, p. 308.

Prior to the passage of this act and under the act of July 26, 1866 (14 Stat. 251), parties making a discovery of a vein or lode could follow the same for 2,200 feet with all its dips and variations, and surface ground in width as limited by local laws or rules and regulations of a mining district, but under this statute a person discovering a vein or lode may claim a surface area 1,500 feet in length by 600 feet in width, if such width was permitted by local laws, but in no case could the width be less than 25 feet on each side of a vein or lode.

Frohner v. Rodgers, 2 Mont. 179, p. 185.
Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 413.

The term "on any mineral vein, lode or ledge" in this section must be read in the light of the requirement of section 2, which limits the location to 1,500 feet in length along the vein or lode and provides that no claim shall extend more than 300 feet on each side of the middle, and these provisions require by necessary implication that a location should be on the lode the entire extent of the 1,500 feet, as otherwise compliance with the law would be impossible in the matter of width, as in such case the basis of measurement provided by law would have no existence.

Patterson v. Hitchcock, 3 Colo. 533, p. 543.

This act grants a license, upon certain conditions, to enter upon and locate a mining claim upon public mineral lands 1,500 feet long by any width not exceeding 600 feet, but an entry and location made in defiance of the statute and with no pretended compliance therewith is a trespass from the beginning.

Frohner v. Rodgers, 2 Mont. 179, p. 188.

An excess of linear feet in a mining location does not render it invalid under this act, but the excess may be rejected if there are no intervening rights.

Hansen v. Fletcher, 10 Utah 266, p. 273.
See Thompson v. Spray, 72 Cal. 528.

Doe v. Tyler, 73 Cal. 21.

Atkins v. Hendree, 1 Idaho 95.

Stemwinder Min. Co. v. Emma & Last Chance Consol. Min. Co., 2 Idaho (421) 426.

Burke v. McDonald, 2 Idaho (646) 679.

Eilers v. Boatman, 3 Utah 159.

b. WIDTH OF CLAIM.

Section 2 simply declares that a mining claim hereafter located shall not exceed 300 feet in width on each side of the center of a vein.

Old, *In re, Copp's Min.* Dec. 201.

Mining regulations can not limit a claim to less than 25 feet on each side of the middle of the vein at the surface.

Old, *In re, Copp's Min.* Dec. 201,
Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 672.

c. LOCAL REGULATIONS AS TO AREA.

Section 2 virtually declared that within the limits fixed therein the local rules and regulations of miners may fix and determine the width of a mining claim.

Frohner v. Rodgers, 2 Mont. 179, p. 186.

Under this act miners of a district, or a State or Territorial legislature, are authorized to regulate and control the width of a location, but in no case should they exceed 600 feet nor be less than 50 feet.

Old, *In re, Copp's Min.* Dec. 201.

A rule of miners providing that locators should have 300 feet of surface ground on each side of their vein, including the vein located and all veins within the surface lines, is not in conflict with the United States mining law.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 453.

Under this statute existing mining locations as an area are governed by the customs, regulations, and laws in force at the date of their location.

Blake v. Butte Silver Min. Co., 2 Utah 54, p. 57.

9. SURFACE BOUNDARY LINES DETERMINE LOCATOR'S RIGHTS.

Under this act a locator of a mining claim locates a definite piece of land containing the apex of the vein or lode, and the implied end lines, under the original act of July 26, 1866 (14 Stat. 251), are expressly provided for, and where formerly the linear bounds of his location were by implication to be defined, there is now provision for distinct surface boundary lines, both side and end, and these lines upon the ground bind absolutely the surface rights acquired, and the end lines bind as absolutely the portion of the vein or lode which they intersect, and at the same time the corresponding zone of the underground extralateral rights thereto, and both surface and mineral rights, are thus defined by one set of boundary lines, and the limitations of mineral rights are to all veins or lodes apexing within these limits.

Pilot Hill & Other Lodes, *In re*, 35 L. D. 592, p. 594.
See Walrath v. Champion Min. Co., 171 U. S. 293, p. 311.

The longitudinal rights of locators are limited by vertical planes drawn downward through the end lines of the claim, and this section also limits the locator's rights on the surface to the surface lines, but recognizes his right to the entire vein beneath the surface and downward, and gives the locator the exclusive right of possession and enjoyment of the surface claim, and also to all veins the apexes of which are found within planes extended downward vertically through the surface lines.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 52.

10. PARALLELISM OF END LINES.

See secs. 2320, p. 82; 2322, p. 145.

The provisions of this statute requiring the lines of a claim to be parallel are directory.
Price v. McIntosh, 1 Alaska 286, p. 291.

This section requires the lines of each claim to be parallel to each other, and is merely directory, and no consequence is attached to deviation from its direction, its object being to secure parallel end lines.

Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

Henry, In re, 10 C. L. O. 102.

Grand Dipper Lode, In re, 10 C. L. O. 240.

The requirement of this act that end lines of a mining claim shall be parallel is merely directory, and its object is to secure parallel end lines drawn vertically downward, and in limiting the locator to his number of feet on the lode throughout its entire depth it must be done by parallel end lines.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 22.

The particular requirement as to the parallelism of end lines has no application to locations made prior to May 10, 1872.

Central Eureka Min. Co. v. East Central Eureka Min. Co., 146 Cal. 147.

The act of July 26, 1866, did not require parallelism in end lines, but such parallelism was essential under the act of 1872 to entitle the locator to follow his vein outside of the vertical planes through his side lines.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 25.

See Iron Silver Min. Co. v. Elgin Min., etc., Co., 118 U. S. 196.

Whether this provision as to the parallelism of end lines is held to be directory or mandatory, the rule is that such parallelism is essential under this act to the existence of any right in a locator or patentee to follow his vein outside of the vertical planes drawn through the side lines.

Iron Silver Min. Co. v. Elgin Min., etc., Co., 118 U. S. 196, p. 208.

East Central, etc., Min. Co. v. Central Eureka Min. Co., 204 U. S. 266, p. 269.

The provisions of this act requiring parallelism of end lines is directory; and the law limits the locator's right to the section of the lode or vein carved out by the vertical planes drawn through the extreme points or end lines of his location at right angles with a line representing the general course or strike of the lode.

Duggan v. Davey, 4 Dak. 110, p. 142.

See Richmond Min. Co. v. Eureka Min. Co., 103 U. S. 839, p. 844.

11. REPRESENTATION WORK.

a. AMOUNT REQUIRED.

Locators of mines before the enactment of this statute were required to do work of the value of \$10 annually for each 100 feet of claims held by them.

Little Gunnell Co. v. Kimber, 15 Fed. Cas. 629, p. 630.

This act requires that certain expenditures shall be made upon a mine annually until patent is issued.

Read, In re, 1 C. L. O. 34.

See Coleman, In re, 1 C. L. O. 34.

This section requires that \$100 shall be annually expended, and on all claims located prior to the date of the act, \$10 worth of labor shall be performed or improvements made each year for each 100 feet in length along the vein.

Patton, In re, Copp's Min. Lands 133.

Schulz, In re, Copp's Min. Dec. 142.

De Noon v. Morrison, 83 Cal. 163, p. 167.

A claim on a vein or lode located subsequent to the passage of this act may be 1,500 feet, and no more, whether located by one or more persons, and an annual expenditure of \$100 thereon is required to hold the claim, and on all locations prior to May 10, 1872, there must be an annual expenditure of not less than \$10 in labor and improvements for

each 100 feet of the claim on the lode, but where several claims of 100 or 200 feet each upon the same lode are held in common, then the aggregate amount necessary to hold all of such claims, at the rate of \$100 per 100 feet, may be expended upon any one claim.

Douglas, In re, Copp's Min. Dec. 136, p. 138.

In the contest as to the right of possession the owner of a mining claim must show that \$100 worth of work was done each year, as required by this act.

Garthe v. Hart, 73 Cal. 541.

Under this section representation is the muniment of title, and if such representation fails the title is gone and, upon forfeiture, the ground becomes again subject to location unless work is resumed before the rights of third parties intervene by relocation.

Belk v. Meagher, 3 Mont. 65, p. 76.

Saunders v. Mackey, 5 Mont. 523, p. 533.

See Belk v. Meagher, 104 U. S. 279; 26 L. Ed. 735.

Hopkins v. Noyes, 4 Mont. 550, p. 556.

Where the right of representation remains there can be no forfeiture, and so long as there is no forfeiture the title of the person entitled to make representation is complete, and the title only expires when the right to make representation is entirely gone.

Belk v. Meagher, 3 Mont. 65, p. 77.

Saunders v. Mackey, 5 Mont. 523, p. 533.

Work done outside of a claim, if done for the purpose and as a means of taking out the ore, or prospecting or developing the claim, such as running tunnels, drifts, or building flumes, or works necessary and proper for mining the claim, will be valuable for holding the claim.

Remington v. Baudit, 6 Mont. 138, p. 140.

While a liberal construction should be given to this section, yet it should not be so liberal as to authorize a claim to be held without representation, or a patent to be procured without the performance of the requisite amount of work upon the claim.

Remington v. Baudit, 6 Mont. 138, p. 142.

See Honaker v. Martin, 11 Mont. 91, p. 96.

Bishop v. Baisley, 28 Ore. 119, p. 134.

An original locator is a discoverer and holds his claim only on condition that he makes the annual expenditure required by law.

Wills v. Blain, 4 N. Mex. 378, p. 382.

Wills v. Blain, 5 N. Mex. 238.

The Land Office has no power to go outside of the law as declared in this section and hold that this section has reference only to such claims as have not been improved to the amount of \$500, as required by section 6 of the act; but section 5 applies to all claims which have not been patented.

Slaughter, In re, Copp's Min. Dec. 135.

This act provides for patenting (a) lode claims, (b) placer claims, (c) mill sites, (d) lode claims and mill sites; but the plat and field notes of survey must show an expenditure of not less than \$500 upon the claim in actual labor and improvements.

Lessig, In re, 1 C. L. O. 1.

b. TIME OF MAKING—EXTENSION.

If the required amount of expenditure in labor and improvements were not made on a mining claim between May 1, 1872, and January 1, 1875, it became subject to relocation on the last date.

Thompson v. Jacobs, 3 Utah 246, p. 249.

A claim represented on December 30, 1877, will save a forfeiture for that year and secure the locator in his title until December 30, 1878, when the possibility of making a representation for that year has expired.

Belk v. Meagher, 3 Mont. 65, p. 77.

The time for the annual expenditure or labor and improvements under this act was extended to January 1, 1875, and no forfeiture could be claimed within that time.

Sapphire Silver Min. Co., In re, Sickels' Min. L. & D. 66, p. 67.

No advantage can be taken of the failure of a coowner to perform his part of the assessment work or to contribute therefor until after January 1, 1875, where the period for making the annual expenditure was extended to that date.

Minnie Tunnel & Min. Co., In re, 3 C. L. O. 66.

C. WORK ON TUNNEL.

Work done and expenditures made in constructing a tunnel intended for the development and improvement of lodes will not satisfy the legal requirements as to expenditure, but such expenditure or labor must be made in good faith upon each lode claim.

Douglas, In re, Copp's Min. Dec. 136, p. 139.

12. EXTRALATERAL RIGHTS.

Under this act the locator of a mining claim has the right to follow his vein or lode though it passes beyond the side lines of his claim.

Wolfley v. Lebanon Min. Co., 4 Colo. 112, p. 114.

Under this act a discoverer of any part of the apex of a vein obtains the right to its entire width, although a portion of the width may be outside of the surface side lines extended downward vertically, and while the locator may have no right to the extralateral surface he does have a right to the extralateral lode beneath the surface.

Bullion, Beck & Champion Min. Co. v. Eureka Min. Co., 5 Utah 3, p. 54.

Neither the act of 1866 nor this act gives to the locator the right to follow the lode upon its strike beyond the surface lines of his location.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

The locator of a mining claim may pursue his vein or lode beyond the limits of his claim and into that of an adjacent proprietor, when it dips beyond the boundary of a side line, or where a claim was located prior to May 10, 1872, and the locator has saved his rights in the manner prescribed by this act he may then follow his vein upon its dip into other ground than his own.

Watervale Min. Co. v. Leach, 4 Ariz. 34, p. 59.

This act enlarged the rights given by the act of July 26, 1866 (14 Stat. 251), authorizing a patentee to follow the vein or lode along its course although entering the land adjoining to the number of feet expressed in the patent, by giving the patentee the right to follow other veins, lodes, or ledges, the top or apex of which lies within his exterior boundaries, if the same were not adversely claimed at the date of the passage of the act, only to such extent, however, along the course thereof as may be embraced by such external boundaries, but to any depth, and giving also the exclusive right of possession to the surface ground embraced with such boundaries.

International Min. & Exchange Co., In re, Copp's Min. Dec. 154, p. 155.
Old, In re, Copp's Min. Dec. 201.

It was left to the Land Department to determine what the rights of a locator under any prior location were under the previous acts and to issue a patent conveying the title of the Government so far as might be necessary to effectuate such rights, but the

patentee did not waive or renounce any extralateral rights by the acceptance of the patent.

Central Eureka Min. Co. v. East Central Min. Co., 146 Cal. 147.

Under the force of the restriction in section 3 a locator could not take beyond planes through his end lines, and this might confine him, within well-defined boundaries, to less on the dip below the surface than he had upon the surface according to the location of his end lines under the prior act.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 29.

13. LOCATION.

a. EFFECT AS A GRANT.

The location of a mining claim under this act carries with it a grant from the Government and confers upon the locator the right to the exclusive possession and enjoyment of all surface ground within the lines of his location; and to make this grant effectual the location must be distinctly marked on the ground so that its boundaries can be readily traced, and the record of the location must contain such a description of the claim as will identify it by reference to some natural object or permanent monument, and both requirements are for the purpose of notice.

Hauswirth v. Butcher, 4 Mont. 299, p. 306.

Russell v. Chumasero, 4 Mont. 309, p. 317.

The act of Congress is in effect an offer by the Government to grant to qualified persons a certain definite portion of the public mineral lands on condition that a discovery of a mineral-bearing lode or vein is made thereon and the surface of the ground claimed along such vein or lode is distinctly marked on the ground so that its boundaries can be readily traced, and in the absence of a local rule or statute giving some time in which to make a location after discovery, no right is conferred as against a valid location of the same ground until these conditions are complied with.

Patterson v. Tarbell, 26 Oreg. 29, p. 34.

There is no grant from the Government under this act unless there is a location of a mining claim according to law, as such a location is a condition precedent to the grant.

Belk v. Meagher, 3 Mont. 65, p. 80.

Hauswirth v. Butcher, 4 Mont. 299, p. 307.

b. BY AGENT.

Under this act a valid mining location may be made by a duly authorized agent in the name and in the absence of his principal.

Schulz v. Keller, 2 Idaho (532) 568.

See Schulz v. Keller, 2 Idaho (305) 333.

Long prior to this enactment the courts of California had held that a valid location of a mining claim could be initiated through an agent.

Schulz v. Keeler, 2 Idaho (305, p. 309) 333.

Gore v. McBrayer, 18 Cal. 582.

Morton v. Solambo Min. Co., 26 Cal. 527.

c. EFFECT AS NOTICE.

The location of a mining claim on the surface of the ground under the act of 1872 and its entry for patent is a notice to the Government and the public that the owner claims all the exclusive rights and privileges granted by the act, and also that he renounces and abandons to the Government all other rights and privileges pertaining to his discovery of the lode for which he seeks the patent.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 605.

Miller v. Hamley, 31 Colo. 495, p. 499.

See New Dunderberg Min. Co. v. Old, 97 Fed. 150.

d. EFFECT AS PROPERTY.

A mining location perfected under this act is the property of the locator or his grantee and the lands so covered are not subject to the disposal of the Government.

Pacific Slope Lode, In re, 12 L. D. 686, p. 688.

See *Belk v. Meagher*, 104 U. S. 279.

The exclusive possession and enjoyment of a mining claim conferred by this act constitutes property capable of being bought and sold, mortgaged or inherited.

Belk v. Meagher, 3 Mont. 65, p. 80.

The possessory title given by this section is by the statute of Montana declared to be real estate and within the statute of frauds and can only be sold and transferred by deed.

Hopkins v. Noyes, 4 Mont. 550, p. 555.

14. LOCATOR AND DISCOVERER PROTECTED.

A discoverer of a vein or lode who proceeds diligently and in good faith to complete his location by marking its boundaries on the ground and otherwise complying with the law will be protected in his rights as against a subsequent locator of the same ground.

Patterson v. Tarbell, 26 Oreg. 29, p. 33.

See *Newbill v. Thurston*, 65 Cal. 419.

The doctrine of relation can not be applied so as to cut off the rights of a prior patentee under a later location where no possession of the location was made under the statute, as the silence of the first locator is a waiver of priority, although the general doctrine of relation applies to mining patents so as to cut off intervening claimants, if any there be, claiming title from other sources.

Rose v. Richmond Min. Co., 17 Nev. 25, p. 65.

See *Eureka Consol. Min. Co. v. Richmond Min. Co.*, 8 Fed. Cas. 819; 4 Sawy. 302.

15. SURVEY AND DESCRIPTION.

The description of a mining claim must be certain, and must be made so by reference to some permanent natural object, so as to identify the claim, and it would seem that the boundary thus made must form the basis upon which a patent is to issue.

Frohner v. Rodgers, 2 Mont. 179, p. 189.

In the survey and description of a mining claim, a bearing and distance must be given from each established corner of the survey to the corresponding corner of the location.

Dephanger, In re, 1 L. D. 581.

16. RECORD OF LOCATION—CONTENTS.

The record of a mining claim does not necessarily include parol proof of actual possession and the extent of that possession is prima facie evidence of title.

Campbell v. Rankin, 99 U. S. 261, p. 264.

A recorded certificate of location is a statutory writing affecting realty and is in part the basis of a miner's right of exclusive possession and enjoyment of his mining location under this statute.

Pollard v. Shively, 5 Colo. 309, p. 312.

The purpose of requiring a record of a mining claim and not of the location notice was to prevent the floating of mining claims.

Gleeson v. Martin White Min. Co., 13 Mont. 442, p. 466.

The records and mining claims made after the date of this act must contain the names of the locators, date of location, and a description of the claim by reference to such natural objects or permanent monuments as will identify the claim.

Dephanger, *In re*, 1 L. D. 581.

Shoo Fly v. Gisborn, 1 C. L. O. 135.

17. LOCATION NOTICE—POSTING.

A location notice is generally, and for safety ought always to be, posted immediately upon the discovery of a vein before there is any time to survey the grounds and ascertain the bearings and distances of natural objects or permanent monuments; and the notice is sufficiently identified by the fact that it is posted on or in immediate proximity to the outcropping of the vein.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 465.

A location notice is not required to contain a description of the claim by reference to some natural object or permanent monument, but only the record of the claim is required in such a description.

Gleeson v. Martin White Min. Co., 13 Nev. 442, p. 465.

A notice of the location of a mining claim under this statute which does not conform to the requirements of the statute is not admissible in evidence.

McBurney v. Berry, 5 Mont. 300, p. 301.

18. POSSESSORY RIGHTS.

A. NATURE AND ESTATE.

This section granted to locators of all mining locations the exclusive right of possession and enjoyment of all the surface included with the lines of their location, as well as of all veins, lodes, and ledges throughout their entire depth, with all extralateral rights, the same as section 2322 R. S.

Brady v. Harris, 29 L. D. 426, p. 427.

A locator of a mining claim has the exclusive right of possession of the surface ground included within the lines of his location upon compliance with the laws of the United States and the local laws and regulations.

George, *In re*, 2 C. L. O. 114.

This act gives to the locator of a mining claim, in addition to the right to occupy and explore, as conferred by the act of July 26, 1866 (14 Stat. 251), the right of exclusive possession and enjoyment.

Belk v. Meagher, 3 Mont. 65, p. 79.

The locator of a lode claim prior to the passage of this act was entitled to the exclusive right of possession and enjoyment of all the surface included within the lines of his location, and of all veins, lodes, and ledges throughout their entire depth so long as he complies with the law, and such a claim can not be included in a subsequent town-site patent.

Cameron Lode, *In re*, 13 L. D. 369, p. 370.

The estate of the locator or owner of a mining claim under this act, as well as under section 2324 R. S., is, before patent issues, a conditional estate, subject to be defeated by failure to perform the required annual work, and any qualified person may take advantage of such failure; and accordingly the locator, or his heirs or assigns, must see that the condition is performed in order that their rights to the possession may continue.

Elder v. Horseshoe Min., etc., Co., 9 S. Dak. 636, p. 640.

The right of location upon the mineral lands of the United States is a privilege granted by Congress, but can only be exercised within the limits prescribed by the grant, and the right of possession comes only from a valid location.

Belk v. Meagher, 3 Mont. 65, p. 80.
Hauswirth v. Butcher, 4 Mont. 299, p. 307.
McKinstry v. Clark, 4 Mont. 370.
Tibbitts v. Ah Tong, 4 Mont. 536, p. 541.

The conditions limiting the possession of mining claims applies to claims previously located as well as to those subsequently located, and this, taken in connection with the reservation of rights acquired under the act of July 26, 1866 (14 Stat. 251), indicated that no change was made in the rights of previous locators by confining their claims within the end lines.

Argonaut Min. Co. v. Kennedy Min., etc., Co., 131 Cal. 15, p. 24.
 See *Iron Silver Min. Co. v. Elgin Min. Co.*, 118 U. S. 196.
Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819; 4 Sawy. 302.

b. OWNER MAY PROTECT BY SUIT.

A person in the possession of a mining claim located under this act may maintain an action in ejectment against persons wrongfully entering thereon.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 407.

This case simply shows an action in equity to quiet title to a mining claim located under this act.

Mantle v. Noyes, 5 Mont. 274, p. 281.

The proof must show the actual possession of a definite part of a mining claim to entitle the claimant to recover the same.

Gelcich v. Moriarty, 53 Cal. 217, p. 220.

In an action for damages for trespass upon mining ground, as well as in an action to determine the right of possession to a mining claim, the plaintiff, as a prerequisite, must show himself to be a citizen of the United States or to have declared his intention to become such.

Bohannon v. Howe, 2 Idaho (417) 453.
 See *North Noonday Min. Co. v. Orient Min. Co.*, 1 Fed. 522.
Hess v. Winder, 30 Cal. 349, p. 355.
Lee Doon v. Tesh, 68 Cal. 43.
Rosenthal v. Ives, 2 Idaho (244) 265.

This section is the same as section 2326 of the Revised Statutes, and an action for the recovery of a mining claim should not be dismissed where part of the material facts alleged in the petition are admitted and a part denied in the answer, thereby denying the plaintiff a right to the trial of the questions denied.

Friend v. Oggshaw, 3 Wyo. 59.

c. EVIDENCE OF TITLE.

Possession of a mining claim at the time of eviction is prima facie evidence of a legal title.

Campbell v. Rankin, 99 U. S. 261, p. 264.
Patchen v. Keeley, 19 Nev. 404, p. 413.

The locator of a mining claim having the right to possession of the surface has also the right to possession of the timber growing thereon.

George, In re, 2 C. L. O. 114.

This act prescribes some conditions as necessary to consistent and possessory title and declares that the failure to comply with such conditions will work a forfeiture and leave the claim open to relocation.

Rush v. French, 1 Ariz. 99, p. 148.

The right to the exclusive possession and enjoyment of a mining claim, accompanied by the right to acquire the absolute title thereto, presupposes a grant, and the instrument of such grant is the act of Congress itself, and applies to all mineral lands and confers a title or easement therein upon the locator, and vests the right in him to become the absolute owner and is equivalent to a patent, and is such a title as will support an action in ejectment.

Belk v. Meagher, 3 Mont. 65, p. 79.

The fact that a locator or his grantee is in the occupation of a mining claim and working the same and has made record of the notice of location as required by law can not be disregarded.

City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.

19. FORFEITURE.

This was the first statute expressly declaring the forfeiture of a mining claim for failure to comply with the terms of the statute.

Rush v. French, 1 Ariz. 99, p. 172.

"The court ought not to infer a construction of the rule or custom of miners which does not fairly exist for the purpose of forfeiting an existing mining claim."

Price v. McIntosh, 1 Alaska 286, p. 297.

See *Jupiter Min. Co. v. Bodie Consol. Min. Co.*, 11 Fed. 666.

20. RELOCATION UNDER THIS ACT—EFFECT.

A mining location made under the act of July 26, 1866 (14 Stat. 251), but not patented prior to May 10, 1872, may be relocated under this act and proceedings had as though no previous application for patent had been made.

San Xavier Mine, In re, Copp's Min. Lands, 119, p. 120.

A locator of a mining claim made prior to the enactment of this statute may abandon such original location and make a new one under this act, but a relocation of 3,000 linear feet would be in violation of the terms of this act.

Seymour (John), In re, Sickels' Min. L. & D. 60, p. 62.

A claimant who discovered and located a lode mining claim under the act of 1866 renounces and abandons all rights to follow the lode on its course beyond the exterior lines of such claim when he locates it upon the surface of the ground, enters it, and accepts a patent therefor under the act of 1872.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 606.

A relocater of a mining claim, when he so describes himself in his notice, solemnly admits that he is not a discoverer of minerals, but an appropriator thereof on the ground that the original discoverer had perfected his rights, and such notice becomes in some sense an instrument of title and is the equivalent of an admission of record to the original locator that the relocater claims a forfeiture by reason of a failure on the part of the first locator to make his annual expenditure.

Wills v. Blain, 4 N. Mex. 378, p. 382.

Wills v. Blain, 5 N. Mex. 238.

See *Belk v. Meagher*, 104 U. S. 279.

A failure to comply with any of the conditions pertaining to the location of mining claims vitiates the location and subjects the ground to relocation, and among these conditions are the extent and boundaries of the claim.

Frohner v. Rodgers, 2 Mont. 179, p. 188.

21. RELOCATION—NOTICE.

A relocation notice simply describing the premises intended to be located thereby as consisting of 200 feet in length, undivided ground on a certain named lode running on and along the course of such lode from the monument on which the notice is posted for the distance located, is insufficient, as it is necessary to describe accurately the location.

Shoo Fly v. Gisborn, 1 C. L. O. 135.

22. INTERSECTING VEINS—RIGHTS OF LOCATORS.

This act plainly defines the rights of locators where veins or lodes intersect and gives to the prior locations the vein below the point of union; but such question can not be determined until the lodes have been developed and it is shown that they are one and the same.

City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.

Under this act a locator has the right to follow his vein or lode to its intersection with another lode, but the ore at the space of intersection belongs to the prior location.

Equator Min., etc., Co., In re, 2 C. L. O. 114.

Sacramento Min. Co. v. Last Chance No. 2 Min. Co., 3 C. L. O. 66, p. 67.

This section clearly provides what the respective rights of the parties shall be where two or more veins intersect or cross each other.

Mountain Tiger, etc., Lodes, In re, Copp's Min. Lands 116.

Under this section the owner of a prior mining location is entitled, where two or more veins unite, to the vein below the point of union and including all the space of intersection, and a patent to a subsequent locator can not defeat the right granted by this section.

Chollar Potosi Min. Co., In re, Copp's Min. Dec. 96, p. 99.

Where locations are substantially parallel, the respective veins in each may intersect or cross upon their dip and for the purpose of providing for the ownership of the ore in such case it is declared that the prior location should take the vein below the point of union, including all the "space of intersection," which in such case refers to the intersection of the vein.

Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, p. 17.

This section gives the prior locator the entire vein within the space of intersection and also the entire vein below the point of union, without reference to the place or point of such union, and such point of union must be regarded as in fact the apex of the unit vein or the tops of the veins which form it must be its apexes, but the apexes of the first-discovered vein is the legal apex of the unit vein and governs the right to the whole.

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, p. 53.

The purpose of this section was to have all conflicts, so far as practicable, settled by the issuance of a patent through the adverse proceedings provided for in this section; but in case of a union of veins on the other dip, such conflict could not well be anticipated, and hence the provision that when the point of union is reached the oldest or prior location should take the vein below such point, including the ore in the space of intersection.

Lee v. Stahl, 13 Colo. 174, p. 179.

23. TUNNEL LOCATIONS.

The effect of this section is to give a party running a tunnel for any purpose, whether for development or for prospecting, the right to preempt any and all lodes not pre-

viously known to exist discovered in such tunnel, the same as if discovered from the surface; and the right of possession being dependent upon discovery in the tunnel, no right could attach prior to discovery.

Corning Tunnel, etc., Co. v. Pell, 4 Colo. 507, p. 509.

Tunnel locators under this act must use reasonable diligence in the prosecution of the tunnel work and a failure to prosecute the work for six months shall be considered as an abandonment as to all undiscovered veins on the line of the tunnel.

David, In re, Copp's Min. Lands 121.

See Hunter, In re, Copp's Min. Lands 222.

The rights of the owners of the Sutro tunnel are guarded by this act.

Sutro, In re, Copp's Min. Lands 98.

This section does not provide for or authorize a tunnel site survey and location 1,500 feet in width, but the line of the tunnel is here used to designate a width marked by the exterior lines or sides of the tunnel.

Corning Tunnel, etc., Co. v. Pell, 4 Colo. 507, p. 509.

The right of possession of veins or lodes here granted to a tunnel owner is dependent, among other things, upon the discovery of a vein or lode in the tunnel, and the purpose of the section, as well as of the entire act, was to fix the rights and reward the labors of a discoverer.

Corning Tunnel, etc., Co. v. Pell, 4 Colo. 507, p. 509.

This section makes provision for the protection of tunnel rights.

Lebanon Min. Co. v. Consolidated Repub. Min. Co., 6 Colo. 371, p. 374.

A tunnel owner who makes a discovery and a location after the passage of this act is entitled to claim 750 feet of the lode each way from the point of discovery, or 1,500 feet in length along such vein or lode.

Ellet v. Campbell, 18 Colo. 510, p. 524.

See Glacier Mountain Min. Co. v. Willis, 127 U. S. 471.

D. PLACER CLAIMS.

1. PURPOSE OF ACT.
2. AREA—ACRES.
3. AREA PERMITTED BY LOCAL REGULATIONS.
4. CONFORMING TO SUBDIVISIONS OF SURVEY.
5. REPRESENTATION WORK.
6. RESERVATION OF KNOWN LODS.
7. APPLICATION FOR PATENT—SHOWING AS TO KNOWN LODS.
8. PATENT—EXCEPTIONS AS TO KNOWN LODS.

1. PURPOSE OF ACT.

See sec. 2329, p. 507.

The provisions of this act contained in section 2331 R. S. were intended to supplement and modify the harsh and inflexible rule of the act of 1870, as found in sections 2329 and 2330 R. S., and its provisions relate to locations of placer claims upon both surveyed and unsurveyed lands, and these not only waive further survey and plat in case of location upon surveyed lands conforming to legal subdivisions, but impliedly contemplate cases of nonconformity and recognize by implication locations upon unsurveyed lands, requiring all placer mining claims located after May 10, 1872, to conform, as near as practicable, with the system of public land survey and the rectangular subdivisions thereof, implying that these limitations shall apply to locations

upon both surveyed and unsurveyed lands, and limiting such locations to 20 acres for each individual claimant.

Snow Flake Placer, In re, 37 L. D. 250, p. 256.
See Wood Placer Min. Co., In re, 32 L. D. 198.

This act was passed largely to relieve the objections raised to the act of July 9, 1870 (16 Stat. 217), requiring placer locations to conform to public surveys; and while this act reenacted the old rule, it gave freedom to the miner in locating his mine according as the ground was valuable for mining or not.

Price v. McIntosh, 1 Alaska 286, p. 294.

Section 10 expressly provides that the original placer act of July 9, 1870 (16 Stat. 217), should continue in force except as to the proceedings to obtain patent, together with other stated exceptions.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350.

No occasion exists for the application of the doctrine of riparian proprietorship on the public lands where the Government is the sole proprietor.

Atchison v. Peterson, 87 U. S. 507, p. 512.

Sturr v. Beck, 133 U. S. 541, p. 551.

2. AREA—ACRES.

Prior to the act of July 9, 1870, Congress imposed no limitation to the area included in a placer claim, and this was determined by local rules and customs of miners, but the act of 1870 provided that patents might be issued for placer claims the same as for lode claims and limited such claims to 160 acres.

Price v. McIntosh, 1 Alaska 286, p. 293.

Smelting Co. v. Kemp, 104 U. S. 636, p. 650.

Under this act a placer claim made by an individual can not exceed 20 acres and a location made by an association of persons can not exceed 160 acres.

Page, In re, Copp's Min. Lands 145.

Beauvais, In re, Copp's Min. Dec. 164.

This act includes both placer and lode claims, and limits the extent of a placer claim for a single individual to 20 acres and requires an annual expenditure of at least \$100 on all claims located after the passage of the act, and neither the rules of miners nor state laws can authorize less.

Sweet v. Webber, 7 Colo. 443, p. 449.

Parties holding possessory rights in accordance with local laws may make a single entry of 327 acres of placer ground upon compliance with the provisions of this act.

Placer Claims, In re, Copp's Min. Lands 121.

3. AREA PERMITTED BY LOCAL REGULATIONS.

Where a local law provides that placer locations shall not exceed 100 feet square to an individual, then no more than that amount can be located, as such a law is not in conflict with the laws of the United States.

Beauvais, In re, Copp's Min. Dec. 164.

Where regulations of a mining district permit placer locations in excess of that permitted by this act, any location made in accordance with such regulations must be restricted to the limits authorized by section 10 of this act.

Beauvais, In re, Copp's Min. Dec. 164.

4. CONFORMING TO SUBDIVISIONS OF SURVEY.

See sec. 2329, p. 507.

A placer mining claim located after the enactment of this statute must conform, as nearly as practicable, with the public surveys and should embrace local subdivisions of the public lands, where this can be done without interfering with the rights of other bona fide claimants.

Blaine (Surveyor General), *In re, Copp's Min. Lands* 115.

Where placer claims can not be conformed to legal subdivisions of the public survey, the applicant may be permitted to proceed with his application, embracing only so much land as was included in the original location, made in accordance with local rules and customs of miners.

Ludekins, *In re, Copp's Min. Lands* 100.

5. REPRESENTATION WORK.

See sec. 2331, p. 546.

Section 5, construed with section 10 of the act of July 9, 1870 (16 Stat. 217), shows that Congress intended to require annual expenditures upon vein or lode claims only, leaving placer claims as they were before the act.

Patton, *In re, Copp's Min. Lands* 133.

6. RESERVATION OF KNOWN LODS.

Section 11 supplied a defect in the act of July 26, 1866 (14 Stat. 251), as amended by the act of July 9, 1870 (16 Stat. 217), by providing for a reservation of known lodes within the placer limits, and this was intended to protect the Government and to prevent the entry of lodes as placer claims, and thereby obtain lode claims for \$2.50 per acre.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 354.

7. APPLICATION FOR PATENT—SHOWING AS TO KNOWN LODS.

Section 11 provides for cases where placer claims contain lode claims within their boundaries and gives a placer claimant the option of purchasing a lode if known to exist; and if an application fails to include an application for such lode claim it is construed as a conclusive declaration that the claimant has no right to such vein or lode claim; but if the existence of the vein or lode is not known then the patent for the placer veins shall convey all valuable mineral and other deposits within its boundaries.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 352.

As this section protects existing mineral rights a placer locator is not required to protest or adverse an application for patent in order to protect his rights to the vein described in his location.

Blake v. Butte Silver Min. Co., 2 Utah 54, p. 57.

Before permitting applicants to make entry of mineral lands at the rate of \$2.50 per acre, the applicants must furnish proof that the premises described in their application do not contain any known veins or lodes of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper.

Jones, In re, Copp's Min. Dec. 226.

Section 16 protects a placer claimant who has made application for patent, paid the purchase price, and received a certificate of purchase prior to the date of the enactment of this statute.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 352.

Where an application for a placer mining claim fails to state the existence of any vein or lode claim within the premises described, it must be considered as a conclusive declaration that the claimant of the placer claim has no right of possession of an existing vein or lode claim.

Jones (Wm.), In re, Copp's Min. Dec. 226.

8. PATENT—EXCEPTIONS AS TO KNOWN LODES.

Under section 11 an exception to the effect that "should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit be claimed or known to exist within the above-described premises at the date hereof, the same is expressly excepted and excluded from these presents," should be inserted in a placer patent.

Page, In re, 2 C. L. O. 82.

Page, In re, Copp's Min. Lands 176.

See Town Site of Central City, In re, 2 C. L. O. 150.

A patent for a placer claim conveys all mineral deposits within its boundaries, including any veins or lodes not then known to exist.

Page, In re, Copp's Min. Lands 176.

Where no application for a patent had been made by a placer claimant where proceedings for a patent could have been inaugurated prior to the date of this act, but were not, the claimant would be compelled to proceed under this section and his patent would be subject to the conditions therein expressed.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 352.

E. MILL SITES.

1. LOCATION—RECORD.

2. APPLICATION FOR PATENT—NONMINERAL LAND—PROOF.

1. LOCATION—RECORD.

Mill sites may be located under the provisions of this act, and when located should be recorded.

George, In re, 2 C. L. O. 114.

Under this act a definite superficial area was made available in the case of every lode mining location, and a new provision for an additional area for mining or milling purposes was also made with a limitation by acreage and not by dimensions, and the prohibition against the contiguity of the mill site with the vein or lode was intended to prevent the appropriation within any such area of a further segment of the actual vein or lode upon which the mining claim itself was predicated.

Yankee Mill Site, In re, 37 L. D. 674, p. 677.

A locator who has held and worked his mine in accordance with local laws and congressional enactments, and who has expended in actual labor and improvements thereon not less than \$500, may patent in connection therewith nonmineral land not contiguous for mining or milling purposes.

Lessig, In re, 1 C. L. O. 1.

2. APPLICATION FOR PATENT—NONMINERAL LAND—PROOF.

Proof of the nonmineral character of a mill site must be filed with the application for patent therefor.

Patterson, In re, Sickels's Min. L. & D. 462.

An applicant for patent for nonmineral land as a mill site can not prevail as against an adverse claimant where the character of the land is not shown, and where he made

no claim of right or title except such as results from an application for patent for a mill site, and where the evidence does not show that any application for patent to any mine was ever made, or that the application for patent to the mill site was included in an application for patent to a noncontiguous vein or lode, and where there is some evidence to show that the application was for a third party.

Hamburg Min. Co. v. Stephenson, 17 Nev. 449, p. 459.

An application for patent for mill site may be approved by the exclusion therefrom of a lode claim where no part of the improvement is upon such lode claim.

Patterson, In re, *Sickels's Min. L. & D.* 462.

Where a locator applies for patent for a lode claim and mill site, he is not required to prove the expenditure of \$500 upon the mill site, but upon the lode claim only.

Lemig, In re, 1 C. L. O. 1.

F. APPLICATION FOR PATENT.

1. PROVISIONS FOR PATENT AND CONTEST.
2. SUFFICIENCY IN FORM AND DESCRIPTION.
3. PLACE OF FILING.
4. CITIZENSHIP—PROOF.
5. CORPORATION AS APPLICANT.
6. PLAT OR DIAGRAM REQUIRED—CERTIFICATE AS TO WORK.
7. DISMISSAL AND REFILEING—EFFECT.
8. PUBLICATION OF NOTICE.
 - a. REGISTER MUST AUTHORIZE.
 - b. NEWSPAPER NEAREST CLAIM.
 - c. ALL IN ONE NEWSPAPER.
 - d. SIXTY DAYS—COMPUTATION OF TIME.
9. NOTICE—PROOF OF POSTING.

1. PROVISIONS FOR PATENT AND CONTEST.

This and the following section make elaborate provisions in regard to the application for a patent for a mining claim and for contest by adverse claimants.

Cranes Gulch Min. Co. v. Scherrer, 134 Cal. 350, p. 352.

The provisions of this act, respecting applications for patent and adverse claims, are for the benefit of all mining claimants alike, whether the locations were made prior or subsequent to its date, except those included in applications pending at the date of the enactment.

Brady v. Harris, 29 L. D. 426, p. 431.

See *Eclipse Gold, etc., Min. Co. v. Spring*, 59 Cal. 304.

Blake v. Butte Silver Min. Co., 2 Utah 54.

All claims arising under prior statutes, and for which no application for patent was pending at the date of this act, were left to be governed by the provisions of the act as to the obtaining of patent and the assertion and determination of adverse claims, and in such cases this act prescribed the only method whereby a patent could be obtained for such claims, and the only method whereby applicants could prevent an adverse but junior claimant from obtaining a patent for the same claim.

Brady v. Harris, 29 L. D. 426, p. 431.

This section prescribes the manner in which patents may be obtained for land claimed and located for valuable mineral deposits.

Diamond Lands, In re, *Copp's Min. Lands* 88, p. 89.

Jenny Lind v. Eureka Min. Co., *Copp's Min. Lands* 124, p. 125.

2. SUFFICIENCY IN FORM AND DESCRIPTION.

By this act the entire system of locating and holding mining claims was changed and new and greater privileges were granted to the locator, and an application must embrace the quantity of surface ground permitted by the act and not the vein or lode, and the patent when issued vests in the patentee the title in fee simple to the surface ground and to all veins, lodes, or ledges having their apexes within the surface boundaries.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 69. (dissenting opinion).

When a locator applies for a patent to mining ground and gives the notice required by the statute, another claimant can object to the issuance of the patent on account of the extent or the form of the claim or because of an asserted prior location; but any such objections must be timely made or they will be precluded by the patent.

Deno v. Griffin, 20 Nev. 249, p. 252.

The department recognizes an application signed by one joint owner in behalf of himself and other owners as the application of all, in the absence of showing of fraud.

Ayers v. Daly, 3 C. L. O. 196.

Nesbitt v. De Lamar's Nevada Gold Min. Co., 24 Nev. 273, p. 286.

3. PLACE OF FILING.

Where mining claims lie partly in one land district and partly in another, application for patent should be filed in the district where the principal workings of the claim are situated, as shown by the plat and field notes, and the diagram and notice should be posted near such workings, and copies of the notice and diagram should be posted in the register's office in each district, and the one in the office of the register, where the application is not filed, should state where the application has been filed and the date of its filing.

Lake Quicksilver Min. Co., In re, 2 C. L. O. 130.

4. CITIZENSHIP—PROOF.

See sec. 2321, p. 99.

Applicants for mineral lands are required to be citizens or to have declared their intention to become such, and the statute expressly prescribes the manner of making satisfactory proof of this point.

Kempton Mine, In re, 1 C. L. O. 178.

Mooney, In re, 3 C. L. O. 68.

Keller v. Trueman, 15 Colo. 143, p. 147.

No distinction is made in the mining laws between the rights and privileges of a citizen and those of a person who has declared his intention to become a citizen in the matter of location, occupation, and appropriation of mining claims.

Sanford, In re, 1 C. L. O. 98.

Proof of citizenship under this act is only required of the applicant himself, and he is not required in his application for patent to a mining claim to prove the citizenship of either the original locator or any intermediate owner.

Sanford, In re, 1 C. L. O. 98.

See City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.

Kempton Mine, In re, 1 C. L. O. 178.

Walker v. Schenck, 2 C. L. O. 2.

A foreigner may locate a mining claim, but he must become a citizen or declare his intention of becoming one before he can obtain a patent or before he can make a valid assignment of his claim.

Kempton Mine, In re, 1 C. L. O. 178.

A person authorized by this act to locate a mining claim is authorized to patent and to convey the same to any person whatever, whether such person be alien or citizen, and the possessory right or title can always be conveyed.

Territory v. Lee, 2 Mont. 124, p. 138.

See Tibbitts v. Ah Tong, 4 Mont. 536, p. 540.

A statute of the Territory of Montana subjecting the inferior titles of aliens to mining claims to forfeiture and confiscation is invalid because in conflict with this statute.

Territory v. Lee, 2 Mont. 124, p. 138.

See Tibbitts v. Ah Tong, 4 Mont. 536, p. 540.

Naturalization has a retroactive effect and is deemed a waiver of all liability to forfeiture of a mining claim and operates as a confirmation of an alien's former title

Sanford, In re, 1 C. L. O. 98.

Kempton Mine, In re, 1 C. L. O. 178.

Cratty v. Routt, 7 C. L. O. 132.

See sec. 2321, p. 101.

The Land Department will not presume that a party was not a citizen before assigning his claim; but if such fact exists it must be affirmatively shown by an adverse claimant.

Kempton Mine, In re, 1 C. L. O. 178.

5. CORPORATION AS APPLICANT.

Under this act corporations were permitted to file application for patent and adverse claims verified by their officers or agents.

Frank Hough Min. Co. v. Empire Prince Min. Co., 42 L. D. 99, p. 103.

This act repealed the first section of the act of July 26, 1866, but retained the same provision in reference to the necessity of citizenship of locators; but it goes further than the former act by providing that any person, association, or corporation authorized to locate a claim under that act, and who had complied with its terms, might obtain a patent therefor.

Lee Doon v. Tesh, 68 Cal. 43, p. 49.

6. PLAT OR DIAGRAM REQUIRED—CERTIFICATE AS TO WORK.

The plat required by section 7 must be made from an actual survey by United States deputy surveyor and the surveyor must attach to his plat a certificate showing the approximate value of the labor performed or improvements made upon the claim.

Tiger Silver Min. Co., In re, Sickels' Min. L. & D. 263.

The locator of a lode or vein under this act must file a diagram of the same, so as to conform to the local laws, customs, and rules of miners, and may receive a patent therefor giving him a right to the vein or lode.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 602.

An adverse claim must conform to the requirements of this section and the adverse claimant must file a plat showing his claim and the relative situation or position with the one against which he claims, so that the extent of the conflict may be fully understood; and such plat must be made from an actual survey by United States deputy surveyor, accompanied by a proper certificate.

War Eagle Mine, In re, Copp's Min. Lands 113, p. 114.

Before a patent can be granted a survey of the surface ground must be made and the surface lines marked upon the ground showing the location to be made along the lode lengthwise.

Walrath v. Champion Min. Co., 63 Fed. 552, p. 556.

7. DISMISSAL AND REFILEING—EFFECT.

An applicant will not receive a patent on his application for mining claim where, after the filing of an adverse claim and a suit commenced thereon in a proper court and the application dismissed and refiled while such suit was pending.

Lewis, *In re, Copp's Min. Lands* 135, p. 136.

8. PUBLICATION OF NOTICE.

a. REGISTER MUST AUTHORIZE.

The notice of publication of application for patent for mining claim must be in accordance with the law, and a valid publication can not be made without the knowledge of the register and in a newspaper not published nearest the claim.

Cascade Lode, *In re, Copp's Min. Lands* 135.

Lewis, *In re, Copp's Min. Lands* 135.

Brown v. Lewis, 1 C. L. O. 50.

b. NEWSPAPER NEAREST CLAIM.

If two or more papers of repute are published equally distant from the claim, the register must designate the one in which the notice shall appear; but in other cases the paper published nearest the claim must be designated, if a reputable newspaper of general circulation.

Foley, *In re, Sickels' Min. L. & D.* 68, p. 69.

Congress intended that a notice should appear in a paper published at a point indicated and the register is authorized to designate the paper, and it is his duty to follow the plain instructions of the statute, and he can not ignore a paper published 2 miles from the claim and designate one published 6 miles distant; but if two or more papers of repute are published equidistant, the register must designate the one in which the notice shall appear, otherwise he must designate the paper published nearest to the claim.

Omaha Quartz Mine, *In re,* 3 C. L. O. 163.

Stewart, *In re,* 8 C. L. O. 155, p. 156.

The intention of Congress was that the notice should appear in the paper published at a point indicated and the register of the local office is authorized to designate such a paper; but he can not ignore a paper published 2 miles from a claim and designate one published 6 miles distant, as the public have a right to look to the paper issued nearest the claim.

Foley, *In re, Sickels' Min. L. & D.* 68.

c. ALL IN ONE NEWSPAPER.

The publication required by this act must be in one newspaper only and can not be made for a part of the statutory period in one newspaper and for the remainder of the time in another.

Northern Light & Fairview Mines, *In re,* 1 C. L. O. 51.

The publication required by this section can not be made for a part of the time in one paper and for the remainder of the time in another paper, and such a publication is not a compliance with the mining law.

McBride, *In re, Copp's Min. Dec.* 234.

d. SIXTY DAYS—COMPUTATION OF TIME.

In computing the time for the publication of notice of application as required in this section, the date of the paper as given thereon should govern.

Eureka Min. Co., *In re, Copp's Min. Dec.* 166, p. 167.

In computing the time for publication of notice as required by this section, the day of first publication is excluded and the last day included in such computation, and on such computation any adverse claim not filed within the 60 days must be rejected.

Jenny Lind v. Eureka Min. Co., Copp's Min. Lands 124.

Eureka Min. Co., In re, Copp's Min. Dec. 166.

Jefferson Min. Co. v. Pennsylvania Min. Co., 1 C. L. O. 66.

Lewis, In re, 4 C. L. O. 114.

See Walker v. Schenck, 2 C. L. O. 2.

The publication of notice of the application for patent for mining claim must cover between the first and the last insertion the full period of 60 days, and must be made in the newspaper published nearest to the mining claim.

McMurdy v. Streeter, 1 C. L. O. 34.

Brown v. Lewis, 1 C. L. O. 50.

See Seymour v. Woods, 4 C. L. O. 82.

The 60-day period under this section was made for the benefit of adverse claimants, and for the purpose of giving them an opportunity to assert their adverse claims, but in case of doubt as to whether the first day of publication should be included or excluded, the doubt should be resolved in favor of the adverse claimant. And in making the computation of time the first day should be excluded and the last day excluded if necessary to bring the filing within the period of publication.

Jenny Lind v. Eureka Min. Co., Copp's Min. Lands 124, p. 126.

If the notice of application is published in a weekly paper, it should be inserted for 10 consecutive weeks; but if published in a daily paper, 60 days must elapse between the first and last insertion of the notice.

Lake Quicksilver Min. Co., In re, 2 C. L. O. 130.

9. NOTICE—PROOF OF POSTING.

Proof is sufficient where it shows that the affidavit, notice, and plat were originally attached by a metallic fastener and were filed with the application as an exhibit, and were then detached by the register and posted in his office, and subsequently, with the proper affidavit, were transmitted to the Land Office as this is a sufficient showing of posting.

Kempton Mine, In re, 1 C. L. O. 178.

G. ADVERSE CLAIMS.

1. STATUTE PROTECTS INTERESTS.
2. NATURE AND PURPOSE OF PROCEEDINGS.
3. WHO MAY PRESENT—INTEREST.
4. FILING WITH REGISTER.
5. WHAT CONSTITUTES—SUFFICIENCY.
6. TIME OF FILING.
7. VERIFICATION—AFFIDAVIT OF CLAIMANT.
8. VERIFICATION BEFORE OFFICER IN LAND DISTRICT.
9. PLEADING AND PRACTICE—APPEAL.
10. DUTY OF DEPARTMENT.
11. FAILURE TO FILE—PRESUMPTION.
12. CONTESTANT—PROTEST.
13. CLAIMANT REQUIRED TO BEGIN SUIT—TIME.
14. SUIT—EFFECT AND JURISDICTION.

15. STAY OF PROCEEDINGS.
16. FAILURE TO BEGIN SUIT IN TIME.
17. FINAL JUDGMENT.
18. DISMISSAL OF SUIT—EFFECT.
19. ABANDONMENT OF CONFLICT GROUND—EFFECT.

1. STATUTE PROTECTS INTERESTS.

The object of section 7 is to protect the rights of an adverse claimant in the disputed premises, to determine the right of possession thereto, and to prevent the department from issuing a patent for the premises in dispute to the wrong person.

Walker v. Schenck, 2 C. L. O. 2, p. 5.

The purpose of section 7 was to have all conflicts, so far as practicable, settled by patent issued on termination of the adverse proceedings provided for.

Lee v. Stahl, 13 *Colo.* 174, p. 179.

This sections means that a contest which may arise in the disposal of mineral lands shall have the right to a determination in a court of competent jurisdiction and the adjudication and determination by the court shall be final, and a patent for the claim in controversy shall issue to the successful party upon the proper showing.

Chambers v. Pitts, 3 C. L. O. 162, p. 163.

See *Ayers v. Daly*, 3 C. L. O. 196.

2. NATURE AND PURPOSE OF PROCEEDINGS.

This section defines the proceedings which are necessary for the adjustment of the relative rights of parties holding lode or placer claims, and these rights are now defined in the same way by section 2333 R. S.

Moxon v. Wilkinson, 2 *Mont.* 421, p. 425.

Congress did not by this section or by the acts of July 26, 1866 (14 *Stat.* 251), or of July 9, 1870 (16 *Stat.* 217), confer any additional jurisdiction upon State courts; but the object of this section was to require parties protesting against the issuance of a patent to institute such proceedings as they might in a State court of competent jurisdiction and there try the rights of possession of mining claims and have the question judicially determined.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 *Nev.* 240, p. 248.

3. WHO MAY PRESENT—INTEREST.

When a locator of a mining claim applies for a patent an interested person must file his adverse claim and bring action in the proper court to have determined the right of possession to the property.

Gropper v. King, 4 *Mont.* 367, p. 368.

A party equitably entitled to the possession of an undivided interest in a mining claim can not be considered as an adverse claimant.

Shoo Fly v. Gisborn, 1 C. L. O. 135.

A person interested in a mining claim, who has not filed an adverse claim under the statute, can not intervene in an action to determine adverse claims to a location, though he claims an interest in the mining ground adverse to both plaintiff and defendant.

Murray v. Polglase, 23 *Mont.* 401, p. 416.

See *Poore v. Kaufman*, 44 *Mont.* 248, p. 258.

4. FILING WITH REGISTER.

An adverse claim is properly filed with the register of the local land office.

Jenny Lind v. Eureka Min. Co., Copp's Min. Lands 124, p. 125.

An adverse claim to an application for patent for mining claim must be filed in the local office within the 60-day publication period.

McMurley (McMurdy), In re, Copp's Min. Dec. 194.

Neither a register nor receiver has authority to dismiss an adverse claim in order to receive additional proof either from the applicant or the adverse claimant after the expiration of the period of publication and before the controversy is decided by a court of competent jurisdiction, unless the adverse claimant fails to commence court proceedings within 30 days after filing his claim.

Overman v. Dardanelles, Copp's Min. Lands 98.

5. WHAT CONSTITUTES—SUFFICIENCY.

Any statement of fact which shows that a named person has a better right to the mining ground sought to be patented, or a portion thereof, than the applicant himself is the proper subject matter of an adverse claim, and when set forth in the manner required by the statute amounts to such claim and must be treated accordingly.

Mono Min. Co. v. Magnolia East & West Co., 2 C. L. O. 68.

An adverse claimant must make a definite allegation or showing upon the matter of ownership.

City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.

The initial boundary and extent of an adverse claim must be shown, and if upon the showing of the adverse claimant, allowing reasonable latitude for want of care or technical knowledge it does not show a conflict in fact, the applicant for patent should not be delayed for the trial of an alleged fact whose nonexistence stands admitted in his opponent's case.

City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.

The subject matter of the controversy to be determined on an adverse claim is not whether or not an applicant shall have a patent, but it is whether one party unlawfully withholds the possession of the premises or any part thereof from the other, and upon that issue the unlawful entry or cause of action may be shown to have accrued to the plaintiff at any time within the running of the statute of limitations.

Shoo Fly v. Gisborn, 1 C. L. O. 135.

It was not intended by Congress that an adverse claim should be construed with the technical precision that a lawyer would be justified in applying to an indictment, and if such a claim informs a person of good sense that a portion of a mining claim for which he is seeking to obtain a patent did not belong to him, but to such adverse claimant, it is sufficient and especially where it points out the nature, boundaries, and extent of the adverse claim.

Jenny Lind v. Eureka Min. Co., Copp's Min. Lands 124, p. 130.

The department may reject an adverse claim for insufficiency of form and may, to a certain extent, consider the sufficiency of the substance of the claim as presented, and if, upon examination, it is found to be bad on general demurrer then it should be rejected.

City Rock & Utah Claimants v. Pitts, 1 C. L. O. 146.

6. TIME OF FILING.

An adverse claim must be filed during the 60-day period of publication.

Daly, In re, 1 C. L. O. 162.

California v. Dardanelles, Copp's Min. Lands 97.

Jenny Lind v. Eureka Min. Co., Copp's Min. Lands 124, p. 125.

An adverse claimant must file his claim during the period of publication, and it must show the nature, boundaries, and extent of such claim, and he must bring suit in the proper court for the recovery of the possession within 30 days thereafter.

Chambers v. Pitts, 3 C. L. O. 162, p. 163.

An adverse claim filed before the expiration of publication of notice, but on which the required fees for filing were not paid until after the expiration of such period of publication, can not be considered as an adverse claim, but must be treated as a protest only and for the purpose of showing that the applicant has failed to comply with the mining act.

Omaha Gold Min. Co., In re, 3 C. L. O. 36.

7. VERIFICATION—AFFIDAVIT OF CLAIMANT.

This statute requires the adverse claim to be verified by the oath of the applicant himself and an agent is not authorized to make such verification.

Brown v. Bond, 11 L. D. 150, p. 154.

McMurdy v. Streeter, 1 C. L. O. 34.

Jefferson Min. Co. v. Pennsylvania Min. Co., 1 C. L. O. 66.

Kempton Mine, In re, 1 C. L. O. 178.

Hawley Consol. Min. Co. v. Memnon Min. Co., 2 C. L. O. 178.

Bell v. Aitkin, 4 C. L. O. 66.

Willard, In re, 4 C. L. O. 67.

Phillips, In re, 6 C. L. O. 92.

Eureka Min. Co. v. Jenny Lind Min. Co., Copp's Min. Lands 124, p. 125.

An adverse claim filed by a corporation may be sworn to by its officer or agent.

Equator Min., etc., Co. v. Marshall Silver Min. Co., 1 C. L. O. 132.

8. VERIFICATION BEFORE OFFICER IN LAND DISTRICT.

Under this section an adverse claim must be sworn to before some officer authorized to administer oaths within the land district where the mining claim is situated, and the reason of this is to bring parties who desire to assert adverse claims within the jurisdiction of the courts where the claim is situated.

California v. Dardanelles, Copp's Min. Lands 97.

All affidavits in matters relating to application for patent must, under this section, be verified before an officer authorized to administer oaths within the land district where the claim is situated.

Dardanelles Min. Co. v. California Min. Co., Sickels' Min. L. & D. 326, p. 327.

9. PLEADING AND PRACTICE—APPEAL.

In a controversy as to the right of possession of a mining claim an averment in the defendant's answer that the plaintiff has not complied with this section, when taken in connection with the allegation as to entry and location, is to be taken as denied by the plaintiff and creates an issue on which the court must make a finding.

Du Prat v. James, 61 Cal. 361.

An applicant for patent for mining claim may appeal from the decision of a register or receiver holding sufficient an adverse claim to the Commissioner of the General Land Office, and the adverse claimant may appeal if such register and receiver hold the claim insufficient.

Overman v. Dardanelles, Copp's Min. Lands 98.

10. DUTY OF DEPARTMENT.

It is the duty of the Land Department, when an adverse claim is presented for consideration, to determine whether the claimant has substantially set forth, under oath, its nature, boundaries, extent, and if a compliance with the law is shown, and on showing that a suit has been instituted the Land Department can proceed no further with the investigation, and the merits of the controversy must be determined by the court.

Chambers v. Pitts, 3 C. L. O. 162, p. 163.
Corning Tunnel, etc., Co. v. Pell, 3 C. L. O. 195.

The mere presentation of an adverse claim followed by proceedings in a court does not oust the jurisdiction of the Land Department.

City Rock and Utah Claimants v. Pitts, 1 C. L. O. 146.

11. FAILURE TO FILE—PRESUMPTION.

Where no adverse claim is filed it must be assumed that none exists and that the applicant is entitled to a patent.

Jenny Lind v. Eureka Min. Co., Copp's Min. Lands 124, p. 129.

Where rights or interests are acquired subsequent to the date of this act, then the failure to file an adverse claim within the prescribed period will constitute a waiver.

Eclipse Gold, etc., Min. Co. v. Spring, 59 Cal. 304, p. 305.

12. CONTESTANT—PROTEST.

A contestant is to be considered a party to the protest for the purpose of showing upon the record that the applicant has not complied with the requirements of the statute.

McMurdy v. Streeter, 1 C. L. O. 34.
Lewis (B), 4 C. L. O. 114, p. 115.

A protest must be sworn to before an officer authorized to administer oaths in the land district where a mining claim is situated.

McMurdy v. Streeter, 1 C. L. O. 34.

A mere protest is not such an adverse claim as is contemplated by this act.

Mountain Tiger, etc., Lodes, In re, Copp's Min. Lands 116.

13. CLAIMANT REQUIRED TO BEGIN SUIT—TIME.

This statute expressly requires an action by an adverse claimant to be commenced within 30 days from the filing of his adverse claim.

Walker v. Schenck, 2 C. L. O. 2, p. 5.
Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 6.

The law requires that a suit be commenced by an adverse claimant in order to entitle him to a stay of proceedings.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 6.

This act not only requires an adverse claimant to commence proceedings but he has to prosecute the same with reasonable diligence to final judgment, and the failure to do so is held to be a waiver of his adverse claim.

Clark v. Calkins, 3 C. L. O. 98.

The fact that an action was pending in a local court between an adverse claimant and an applicant for a patent for a mining claim does not relieve such adverse claimant from the obligation to bring a suit on his adverse claim as imposed by this statute.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 2 C. L. O. 5, p. 7.

14. SUIT—EFFECT AND JURISDICTION.

It was the intention of Congress to refer all questions arising from a conflict of claims to the court possessing the power necessary to ascertain the truth and facts relating to such conflict, a power not possessed by the Land Department.

Ayers v. Daly, 3 C. L. O. 196.

When a patent is to be issued to the locator of a mining claim, and an adverse claim is filed the United States statutes leave the parties to courts of competent jurisdiction to determine, under the local laws and customs and irrespective of the act of Congress, which of the parties is entitled to the mining claim; the statute itself thus clearly indicating that all cases involving disputes as to mineral claims are not necessarily of Federal jurisdiction.

Trafton v. Nougues, 24 Fed. Cas. 123.

See Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Fed. Cas. 592.

When an action is brought on an adverse claim under this section, whatever may be its character, it must be brought by the same rules, governed by the same principles, and controlled by the same statute that apply to such actions in State courts irrespective of the several acts of Congress.

Four Hundred Twenty Min. Co. v. Bullion Min. Co., 9 Nev. 240, p. 249.

The only matter that can be legally presented to a court is such as relates to the premises in controversy, and a court has no power to adjudicate upon anything else; but the fact of bringing a suit by an adverse claimant and obtaining a judgment in his favor does not necessarily entitle him to a patent on filing a certified copy of the judgment, as other interested persons or adverse claimants would have the right to file their claims at any time within the period of publication.

Walker v. Schenck, 2 C. L. O. 2, p. 5.

A bill in equity filed in a district court to restrain applicants from further prosecuting their applications for patent for a mining claim is not such an action as can be taken notice of by the Land Department for the stay of proceedings.

Daly, In re, 1 C. L. O. 162.

15. STAY OF PROCEEDINGS.

Where an adverse claim is properly filed, proceedings upon the application will be stayed until the controversy has been determined by a court of competent jurisdiction.

Equator Min., etc., Co. v. Marshall Silver Min. Co., 1 C. L. O. 132.

Shoo Fly v. Gisborn, 1 C. L. O. 135, p. 138.

Wheeler, In re, 7 C. L. O. 130.

Mt. Pleasant Mine, In re, Copp's Min. Lands 204, p. 207.

Section 7 provides that when an adverse claim is filed, as pointed out, all proceedings except publication of notice and making and filing the affidavit of proof should be stayed until the controversy is settled in a court of competent jurisdiction.

Walker v. Schenck, 2 C. L. O. 2, p. 5.

On the commencement of suit in the proper court by an adverse claimant the jurisdiction to determine the rights of the parties to the claim in controversy is transferred to the court, and the Land Department has no further duty to perform, except the publication of notice and making and filing of the affidavit thereof, until a final determination of the case.

Chambers v. Pitts, 3 C. L. O. 162.

Ayers v. Daly, 3 C. L. O. 196.

16. FAILURE TO BEGIN SUIT IN TIME.

A suit commenced after the expiration of the 30 days prescribed in this section can not operate as a bar to the issuance of a patent.

Mt. Pleasant Mine, In re, Copp's Min. Lands 204, p. 205.

See Morse v. Streeter, Copp's Min. Dec. 127.

An adverse claimant who has not commenced his action within the statutory period can only appear as a protestant.

Mt. Pleasant Mine, In re, Copp's Min. Lands 204, p. 205.

17. FINAL JUDGMENT.

The final judgment in such a proceeding may only determine that the adverse claimant has the right of possession to the ground disputed.

Walker v. Schenck, 2 C. L. O. 2, p. 5.

18. DISMISSAL OF SUIT—EFFECT.

A written stipulation and dismissal filed in court in the suit commenced by an adverse claimant properly signed by the acting counsel is a waiver of the adverse claim within the meaning of this section.

Mono Min. Co. v. Magnolia East & West Co., 2 C. L. O. 68.

19. ABANDONMENT OF CONFLICT GROUND—EFFECT.

The filing of an abandonment of the surface ground in conflict in the office of the Land Department does not determine or otherwise affect a suit instituted in the proper court by an adverse claimant and gives the Department no authority to proceed with the application to entry and patent.

Ayers v. Daly, 3 C. L. O. 196.

See Walker v. Schenck, 2 C. L. O. 2.

Sacramento Min. Co. v. Last Chance No. 2 Min. Co., 3 C. L. O. 66.

When an applicant for a patent becomes a defendant in a suit commenced by an adverse claimant and waives his claim and confesses judgment, and thus acknowledges the superior right of the plaintiff to the tract in conflict, the controversy as to such tract is ended and the plaintiff should be no longer deprived of a patent for the premises to which he has shown himself legally entitled.

Mt. Pleasant Mine, In re, 3 C. L. O. 194.

The abandonment of the surface ground or of the entire premises in controversy before the Land Department and the continued prosecution of a suit involving the same premises in court is not a suit justified by a correct interpretation of the mining laws.

Mt. Pleasant Mine, In re, 3 C. L. O. 194, p. 195.

H. PATENT.

1. RIGHTS UNDER PRIOR ACT NOT AFFECTED.
2. CONVEYS LODE AND SURFACE GROUND WITH EXTRALATERAL RIGHTS.
3. EFFECT OF ISSUANCE ON ADVERSE CLAIM.
4. EFFECT IN CASE OF CONFLICT GROUND.
5. VESTED WATER RIGHTS EXCEPTED.

1. RIGHTS UNDER PRIOR ACT NOT AFFECTED.

Rights acquired under an application pending under the act of 1866 (14 Stat. 251) at the time of the enactment of this statute are in no way affected or impaired by this act, and a patent issued upon such application conveys the same rights as under the act of 1866 and gives the patentee all of the veins or lodes the tops or apexes of which lie inside the exterior boundaries of the surface ground patented the same as under this act.

Watson, In re, 1 C. L. O. 82, p. 83.

2. CONVEYS LODE AND SURFACE GROUND WITH EXTRALATERAL RIGHTS.

Mineral patents by their recitation convey the lode or vein named in the patent to the number of feet named as well as the surface ground described in the patent, and any exception of ground previously conveyed or patented should be made equally broad.

Watson, In re, 1 C. L. O. 82, p. 83.

Under this section an applicant has a right to a patent for the number of feet along his lode or vein to which he has the local title, upon full compliance with the law, but where another lode crosses the ore at the space of intersection of the two bodies belongs to the parties owning the prior location.

Belford, In re, 2 C. L. O. 178.

A patent from and after the enactment of this statute conveys to the patentee the surface ground embraced by the interior boundaries of the survey, and the right to follow the vein or lode named in the patent to the number of feet patented, though departing from the land embraced in the survey and entering land adjoining, together with all other veins, lodes, or ledges throughout their entire depth the top or apex of which lies inside of such surface lines extended downward vertically, though they depart from a perpendicular and extend outside such vertical lines, but these rights are limited by the vertical planes drawn downward through the end lines of the location.

International Min. & Exchange Co., In re, Copp's Min. Dec. 154, p. 155.

3. EFFECT OF ISSUANCE ON ADVERSE CLAIM.

A patent to a mining claim issued after the statute of 1872 for a mining claim located under the act of 1866 is a judgment of the General Land Office that no adverse claim existed on May 10, 1872, and that no adverse rights would be affected and a conveyance of the legal title of every vein or lode whose apex lay within the surface boundaries of such claim extended downward vertically.

New Dunderberg Min. Co. v. Old, 79 Fed. 598, p. 603.

4. EFFECT IN CASE OF CONFLICT GROUND.

Where a patent issues for a mining claim which crosses one already patented, the surface ground in conflict is excepted from the two patents, but the subsequent patentee has the right under his patent to his lode for the distance patented, except as to the ore at the space of intersection.

Belford, In re, 2 C. L. O. 178.

5. VESTED WATER RIGHTS EXCEPTED.

Agricultural patents must except vested and accrued water rights for mining or other purposes and rights to such ditches and reservoirs as may be recognized by local customs, laws, and decisions of courts and the right of the proprietor of a vein or lode to remove ore therefrom.

Page, In re, Copp's Min. Lands 176.

I. AMENDMENTS TO 17 STAT. 91.

AMENDMENT 1.

18 Stat. 61, June 6, 1874.

AN ACT To amend an act entitled "An act to promote the development of the mining resources of the United States," passed May 10, 1872.

Be it enacted, etc., That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May 10, 1872, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the 1st day of January, 1875.

A. REPRESENTATION WORK.

B. MINING CLAIMS, p. 723.

A. REPRESENTATION WORK.

1. TIME EXTENDED.

By this act the time for making the annual expenditure upon mines located prior to May 10, 1872, was extended to January 1, 1875.

Minnie Tunnel & Min. Co., In re, 3 C. L. O. 66.

Smith v. Van Clief, 6 C. L. O. 2.

Seaton Min. Co. v. Davis, 7 C. L. O. 147.

By this act the time for making the annual expenditures as required by the act of May 10, 1872 (17 Stat. 91), was extended to January 1, 1875, but the required work must be done within that time or the claim was subject to relocation.

Thompson v. Jacobs, 3 Utah 246, p. 249.

As to cases arising now the law stands as it would have stood had the original act of May 10, 1872 (17 Stat. 91), provided that the first annual expenditure on claims then in existence might be made at any time prior to January 1, 1875, and annually thereafter until patent issued.

Lacey v. Woodward, 5 N. Mex. 583, p. 588.

Belk v. Meagher, 104 U. S. 279, p. 282.

2. PERFORMANCE AVOIDS ABANDONMENT.

There is no abandonment where a locator continues work either by surface or tunnel, and there can be no relocation.

Diamond Creek Gold, etc., Min. Co. v. Lloyd, 9 C. L. O. 54, p. 55.

B. MINING CLAIMS.**1. STATE CONTROL.**

Congress took it for granted that Territorial legislatures had the power to legislate on the matter of regulating mining claims.

O'Donnell v. Glenn, 8 Mont. 248, p. 258.

AMENDMENT 2.

19 Stat. 52, 1 Supp. R. S. 104, May 5, 1876.

AN ACT To exclude Missouri and Kansas from the provisions of the act of May 10, 1872.

Be it enacted, etc., That within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of mining resources of the United States" approved May 10, 1872, and all lands in said States shall be subject to disposal as agricultural lands.

A. MINING STATUTE.**1. CONSTRUCTION AND EXCEPTION OF SPECIAL MINERALS.**

By this act deposits of coal, iron, lead, or other mineral in Missouri and Kansas were excluded from the operation of the act of May 10, 1872.

Deffeback v. Hawke, 115 U. S. 392, p. 402.

Congress took it for granted that Territorial legislatures had the power to legislate on the matter of regulating mining claims.

O'Donnell v. Glenn, 8 Mont. 248, p. 258.

The exclusion from the mining statute of deposits of coal, iron, lead, or other minerals within the States of Missouri and Kansas would not have been necessary if Congress had not understood that the mining statutes included nonmetallic minerals.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 240.

III. COAL-LAND SECTIONS AND STATUTES.

I. COAL SECTIONS.

II. COAL STATUTES, p. 786.

SECTION 2347, REVISED STATUTES.

I. COAL SECTIONS.

Every person above the age of 21 years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding 160 acres to such individual person, or 320 acres to such association, upon payment to the receiver of not less than \$10 per acre for such lands, where the same shall be situated more than 15 miles from any completed railroad, and not less than \$20 per acre for such lands as shall be within 15 miles of such road.

A. CONSTRUCTION OF SECTION.

B. PERSONS QUALIFIED TO PURCHASE AND ENTER, p. 726.

C. ENTRY AND PATENT, p. 728.

D. AREAS OF COAL LAND ACQUIRED, p. 738.

E. CLASSIFICATION AND WITHDRAWAL, p. 740.

F. COAL LANDS—VALUABLE FOR MINERAL, p. 742.

G. PRICE OF COAL LANDS, p. 748.

H. PATENT, p. 750.

A. CONSTRUCTION OF SECTION.

1. REENACTMENT OF ORIGINAL ACTS.

2. SYSTEM OF MINING LAWS.

3. PROVISIONS FOR DISPOSAL OF COAL LANDS.

4. POLICY OF GOVERNMENT AS TO COAL LANDS.

5. RIGHT OF PREEMPTION AND ENTRY OF COAL LANDS.

6. EXTENSION OF LAWS TO ALASKA.

1. REENACTMENT OF ORIGINAL ACTS.

The provisions of the act of July 1, 1864 (13 Stat. 343), and its supplementary act of March 3, 1865 (13 Stat. 529), were substantially reenacted by the act of March 3, 1873 (17 Stat. 607), and all these provisions are now embodied in this and the following sections, but the force and meaning of the original provisions remain unchanged.

Colorado Coal, etc., Co. v. United States, 123 U. S. 307, p. 325.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 235.

This and the following sections are a reenactment of the act of 1873 (17 Stat. 607) which was not a part of the preemption system for the disposal of public lands, but was an act to provide for the sale of the lands of the United States containing coal.

Coal Lands, In re, 1 L. D. 540, p. 541.

Grunsfeld, In re, 10 L. D. 508, p. 509.

Watkins v. Garner, 13 L. D. 414.

Section 2 of the act of May 14, 1880 (21 Stat. 140), is construed to apply to entries of coal lands under the act of March 3, 1873 (17 Stat. 607).

Hobbs, In re, Copp's Pub. Lands 161, p. 162.

Under the act of March 3, 1873 (17 Stat. 607), coal entries can be made on sections 16 or 36 granted to a Territory for school purposes.

Wood, In re, 10 C. L. O. 225, p. 226.

See Keystone, In re (April 28, 1873).

The words of section 4 (17 Stat. 607) "That this act shall be held to authorize" were necessarily changed in section 2350 R. S. to the words "The three preceding sections," because the provisions of the original act were made a part of the general land laws embracing the sale of other public lands.

United States v. Munday, 222 U. S. 175, p. 180.

2. SYSTEM OF MINING LAWS.

The act of July 1, 1864 (13 Stat. 343), providing for the sale of tracts embracing coal lands or coal fields, continued in force until the adoption of this section, which authorized the preemption and purchase of such lands in limited tracts; but the disposition of precious metals or minerals in public lands was governed by the act of 1841 (5 Stat. 453) until the adoption of the act of July 26, 1866 (14 Stat. 251).

Alabama, In re, 6 L. D. 493, p. 500.

This and the following sections of the Revised Statutes, together with the act of June 6, 1900 (31 Stat. 658), and the act of April 28, 1904 (33 Stat. 525), comprise a system of laws relating to the entry and location of coal lands and must be read and construed together, and are all intended to be operative.

United States v. Munday, 222 U. S. 175, p. 181.

This and the following section must be construed together in determining the rights that an association of persons may have to enter 640 acres of coal land.

McWilliams v. Green River Coal Ass'n., 23 L. D. 127, p. 129.

3. PROVISIONS FOR DISPOSAL OF COAL LANDS.

This and the following sections provide for the sale of coal lands under the general term "mineral lands and resources."

Town Site of Coalville, In re, 4 C. L. O. 46, p. 47.

Fox, In re, 4 C. L. O. 66.

Hutchings, In re, 4 C. L. O. 142.

This and the following sections comprise the act of March 3, 1873 (17 Stat. 607) and supersede the act of July 1, 1864 (13 Stat. 343), providing for the disposal of coal lands.

Alabama, In re, 15 C. L. O. 7, p. 9.

This, with the succeeding sections, makes full provision for the disposal of coal lands and only in accordance with these sections can these lands be disposed of.

Crafts, In re, 36 L. D. 138, p. 139.

This and the following sections cover the entire field of assertion of claims to and disposal of coal lands, and all the provisions must be read together and so construed as to give harmonious operation if possible.

Carthage Fuel Co., In re, 41 L. D. 21, p. 27.

The Land Department can only dispose of coal lands in Wyoming where such lands are actually occupied at the date of survey.

Foster, In re, Copp's Min. Lands 337.

Congress by this act could confer no rights upon mineral claimants to coal and iron lands granted to the Union Pacific R. Co. under the act of July 2, 1864 (13 Stat. 356), where the road was definitely located long prior to the passage of this act.

Union Pac. R. Co., In re, Copp's Min. Lands 338.

See Union Pac. R. Co. v. Crismon, Copp's Min. Lands 340.

4. POLICY OF GOVERNMENT AS TO COAL LANDS.

In 1873 Congress formulated its policy as to the disposition of the public coal lands of the United States, and the laws relating thereto were codified and carried into the revision of the statutes in 1874 under sections 2347 to 2352, inclusive.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 224.

The policy of the Government as to the disposal of coal lands has been recognized by the Congress.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 226.

The Government, in the matter of disposing of coal lands, is not to be regarded as occupying the attitude of a mere seller of real estate for its market value, and the small price required to obtain title to such lands is not presumed to have had any influence in determining the policy to be adopted in opening them to entry, and the object of Congress was to develop the material resources of the country by opening its vacant coal lands to entry by individuals and by associations of persons at prices below their actual value.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 170.

5. RIGHT OF PREEMPTION AND ENTRY OF COAL LANDS.

The right to enter coal lands is regulated by this and the following sections to and including section 2352 R. S.

United States v. Wells, 192 Fed. 870, p. 872.

Coal lands are subject to preemption and entry precisely the same as agricultural lands, except as to price and limit as to the amount which may be entered.

Alabama, In re, 6 L. D. 493.

Watkins v. Garner, 13 L. D. 414, p. 416.

6. EXTENSION OF LAWS TO ALASKA.

The provisions of this and the other sections of the coal land laws were by the act of June 6, 1900 (31 Stat. 658), extended to the District of Alaska, and by the amendment of April 28, 1904 (33 Stat. 525), made applicable to the unsurveyed public lands of Alaska.

United States v. Munday, 222 U. S. 175, p. 181.

When the unsurveyed coal lands of Alaska shall be surveyed, they will come at once under the restrictions of the general coal land laws found in this and the following sections.

United States v. Munday, 222 U. S. 175, p. 182.

B. PERSONS QUALIFIED TO PURCHASE AND ENTER.

1. QUALIFICATIONS.

2. MEMBERS OF ASSOCIATION MUST BE QUALIFIED.

3. CORPORATION AS AN ASSOCIATION.

4. CORPORATION—RIGHT TO ENTER.

1. QUALIFICATIONS.

The right to enter coal lands is given by this section only to persons above the age of 21 years who are citizens of the United States or who have declared their intention to become such, and to associations of persons severally so qualified.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, pp. 165, 169.

Circular, In re, 1 L. D. 687.

Ackert, In re, 17 L. D. 268, p. 269.

The prerequisite qualifications provided by the preceding section are the full age of the applicant, citizenship of the United States, or intention to become such.

McConnell, In re, 18 L. D. 414, p. 416.

All that is required by this section of an applicant is that he shall show himself qualified to enter and prove that the lands applied for are of the character subject to sale and pay the Government price therefor.

McKibben v. Gable, 34 L. D. 178, p. 180.

This section gives every qualified person, as well as any qualified association, the right to enter certain quantities of vacant coal land.

Carthage Fuel Co., In re, 41 L. D. 21, p. 25.

A person who has never been in possession of coal land or made any improvements thereon is only entitled to make an entry under this section.

McKean v. Buell, Copp's Min. Lands, 343, p. 344.

2. MEMBERS OF ASSOCIATION MUST BE QUALIFIED.

Each person of an association of persons within the meaning of this section must possess the same qualifications as an individual applicant.

Circular, 1 L. D. 687.

An entry can not be made by an association of persons which has in it a single disqualified person.

Circular, 1 L. D. 687, p. 689.

Congress, under this and other sections, prescribed the conditions under which individuals and associations of individuals might acquire coal lands, and its intention should not be defeated by a narrow construction of the statute.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 167.

United States v. Keitel, 211 U. S. 370, p. 381.

United States v. Allen, 180 Fed. 855, p. 860.

3. CORPORATION AS AN ASSOCIATION.

The purpose of the Government would be defeated entirely if corporations are not "associations of persons" within the meaning of this section and subject to its restrictions.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 169.

United States v. Munday, 222 U. S. 175.

The prohibition of this section as to the quantity of land to be entered in respect to associations of persons applies equally to incorporated and unincorporated associations.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 169.

United States v. Munday, 222 U. S. 175.

4. CORPORATION—RIGHT TO ENTER.

An entry to a corporation will not be allowed to pass to patent where the members of the corporation do not possess the necessary qualifications.

Hawes, In re, 5 L. D. 224, p. 226.

See Kerr v. Utah-Wyoming Imp. Co., 2 L. D. 727.

A corporation organized by a person holding voidable patents for coal lands for the purpose of taking over such lands is not a bona fide purchaser for value without notice to the extent of precluding the Government from canceling the patent, and the fact that innocent parties may have acquired some of the stock of the corporation will not prevent a prosecution by the Government.

United States v. Allen, 180 Fed. 855, p. 860.

Where a corporation files a declaratory statement under this act it must furnish the affidavit of the secretary setting forth in full the names of the stockholders at the date of the purchase, and each stockholder must file an affidavit to the effect that he has never held or purchased any coal lands under this act, either as an individual or as a member of an association.

Wyoming Coal & Min. Co., In re, Copp's Min. Lands 338.

C. ENTRY AND PATENT.

1. APPLICATION NECESSARY.
2. PROOF AND PAYMENT OF PRICE AFTER APPLICATION.
3. NONCONTIGUOUS TRACTS NOT SUBJECT TO ENTRY.
4. LEGAL SUBDIVISIONS ONLY SUBJECT TO ENTRY.
5. PREFERENCE RIGHT OF ENTRY.
6. PURCHASE WITHOUT DECLARATORY STATEMENT.
7. CASH ENTRIES—PREFERENCE.
8. CASH ENTRY NOT PERMITTED.
9. PROCEEDINGS TO COMPEL ENTRY.
10. ASSIGNEE'S RIGHT TO MAKE ENTRY.
11. ENTRY BY ONE PERSON FOR ANOTHER UNDER AGREEMENT.
12. FRAUDULENT ENTRY.
13. COMBINATIONS AND CONSPIRACY.
14. INDICTMENT FOR CONSPIRACY—PROOF.
15. CANCELLATION OF ENTRY FOR FRAUD—EFFECT AND RIGHTS.
16. ENTRY BY ONE FOR BENEFIT OF ANOTHER—EFFECT AND VALIDITY.
17. ENTRY BY ONE FOR BENEFIT OF AN ASSOCIATION—EFFECT.
18. ENTRY FOR BENEFIT OF CORPORATION.
19. TRANSFER AFTER ENTRY—RIGHTS OF ASSIGNOR AND ASSIGNEE.
20. ENTRY UNDER SOLDIERS' ADDITIONAL HOMESTEAD LAW.
21. CORPORATION MAY PURCHASE FROM ENTRYMEN.

1. APPLICATION NECESSARY.

A claimant under this section must make the affidavit and application provided for by the regulations before he can initiate any claim recognized by law.

McKean v. Buell, Copp's Min. Lands 343, p. 344.

Whether a coal applicant has complied with the law is a question of fact, and when the findings of the local officers in this respect have been concurred in by the Land Office they are accepted by the department.

Watkins v. Garner, 13 L. D. 414, p. 415.

Parties who comply strictly with all the requirements of this and the succeeding sections, and the rules and regulations, and carried into effect the provisions for the sale of coal lands can not be required to do anything more.

Mosley, In re, 6 L. D. 620.

No fixed rule can be established that will govern in every case relative to the good faith of an applicant, but it is proper to consider the degree and condition in life of the entryman in determining whether the improvements show good faith, otherwise only the man of ample means can enter coal lands; but these lands are sold at a lower price so that men of moderate means may purchase them.

Watkins v. Garner, 13 L. D. 414, p. 416.

An application for entry and patent for coal land within a school section where, after contest on the part of a State, the land is excepted from the school grant, may be approved and the entry permitted to stand; but the applicant must pay the appraised price of the land at the time of the entry and not the price existing at the date of his application.

Ostenfeldt, In re, 41 L. D. 265, p. 267.

McCornick, In re, 41 L. D. 661, p. 666.

2. PROOF AND PAYMENT OF PRICE AFTER APPLICATION.

Neither this nor the succeeding sections require that the payment for coal land shall accompany the application, and there is no reason why this should be required under this section or under the act of April 28, 1904 (33 Stat. 525).

Alaskan Coal Lands, In re, 28 Op. Atty. Gen. 448, p. 454.

The regulations under this section require coal-land applicants to furnish, within 30 days after the expiration of the period of newspaper publication, proof and tender the purchase price of the land, and on failure to do so the application shall be rejected by the local officers and coal applicants are charged with constructive knowledge of such regulations.

McCornick, In re, 41 L. D. 661, p. 663.

A person successfully contesting a preemption, homestead, or timber-culture entry on the ground that the land embraced therein is valuable for coal land, may be allowed 30 days from notice of the cancellation within which to make application to enter all open and improved coal mines thereon, as provided by this act and the succeeding sections.

Hobbs, In re, 1 Copp's Pub. Lands 161, p. 162.

3. NONCONTIGUOUS TRACTS NOT SUBJECT TO ENTRY.

Coal entries can not be made of separate noncontiguous tracts.

Masterson, In re, 7 L. D. 172.

Masterson, In re, 7 L. D. 577.

Kendall v. Hall, 12 L. D. 419, p. 422.

It is the policy of the Government to require entries under this section to be made in one body.

Masterson, In re, 7 L. D. 172, p. 175.

A coal entry embracing noncontiguous tracts, but made in good faith and in accordance with the practice then existing, may be passed to patent, or it may be amended so as to include contiguous tracts.

Masterson, In re, 7 L. D. 577.

4. LEGAL SUBDIVISIONS ONLY SUBJECT TO ENTRY.

Lands entered as coal lands must be entered by legal subdivisions, and there is no authority for segregating the coal from other land within a 40-acre legal subdivision.

Mitchell v. Brown, 3 L. D. 65, p. 67.

Lyon, In re, 20 L. D. 556.

Rider, In re, 42 L. D. 505.

Coal lands must be offered for sale by legal subdivisions only, and the proof must show that each 40-acre tract applied for contains coal.

Elridge, In re, 1 C. L. O. 19.

Under this section the smallest legal subdivision is 40 acres, and if coal has been discovered the party is entitled to the entire legal subdivision.

Montana v. Buley, 23 L. D. 116, p. 119.

Where a part of a 40-acre tract is coal land it does not follow that the entire tract should be reserved for disposal under the coal-land law, but the question to be determined is whether the tract taken as an entirety is more valuable for the coal it contains than for agricultural purposes.

Mitchell v. Brown, 3 L. D. 65, p. 67.

As coal lands are required to be entered according to the legal subdivisions, and any quantity not exceeding 160 acres may be so entered, the inference is that the legal subdivisions are to be considered when making entry, and if any legal subdivisions were entered which afterwards proved not to be coal land, such legal subdivision has been improperly entered and the entry as to such legal subdivision should be canceled, leaving the remaining entry intact.

Scott v. Sheldon, 15 L. D. 588, p. 591.

See Tinkham v. McCaffrey, 13 L. D. 517.

McWilliams v. Green River Coal Assn., 23 L. D. 127.

The act of March 3, 1873 (17 Stat. 607), as carried into section 2347 et seq., did not permit an entry of coal lands which had not been surveyed, as the entry permitted was only by legal subdivisions.

United States v. Munday, 222 U. S. 175, p. 180.

5. PREFERENCE RIGHT OF ENTRY.

The preference right of entry given by section 2348 is the right to enter by legal subdivisions an area of vacant public coal lands authorized by this section, and upon payment of the purchase price as provided by this section.

Morrison, In re, 36 L. D. 126, p. 128.

To obtain a preference right of entry a claimant must have actual possession and have opened and improved a mine of coal.

Filer, In re, 36 L. D. 360, p. 361.

An applicant may purchase the land notwithstanding the expiration of his preference right, if not otherwise disqualified, if the same has not been entered or applied for by any other qualified applicant.

Morrison, In re, 36 L. D. 126, p. 130.

See Lehmer v. Carroll, 34 L. D. 447.

A mere application to purchase under the coal-land laws does not of itself secure to the applicant a right, yet the law provides that upon application to the register a qualified person shall have the right to enter according to legal subdivisions vacant coal lands not otherwise appropriated or reserved.

Demple v. Coe, 38 L. D. 528, p. 533.

An application to purchase coal lands presented and accepted at a time when the land is not subject to sale or entry, and afterwards when the land becomes subject to entry, if prosecuted to completion without objection, should have preference over a subsequent application, but such application should not enjoy an unfair advantage because of priority, and a later application may under some circumstances be preferred.

Demple v. Coe, 38 L. D. 528, p. 533.

Distinguishing Morrison, In re, 36 L. D. 126.

Morrison, In re, 36 L. D. 319.

Filer, In re, 36 L. D. 360.

The sale of coal lands is provided for by ordinary private entry under this section or by granting a preference right of purchase based on priority of possession and improvement under the next section.

Circular, In re, 1 L. D. 687.

Coal lands are equally open to purchase and entry without a preference right, or without its assertion if acquired, or even after its termination.

Stevens, In re, 37 L. D. 723, p. 727.

See *McKibben v. Gable*, 34 L. D. 178.

Lehmer v. Carroll, 34 L. D. 447.

6. PURCHASE WITHOUT DECLARATORY STATEMENT.

The coal entries provided for under this section contemplate a pure purchase with no elements of preemption, as that term is used in connection with homestead, timber-culture, or desert lands.

United States v. Yankee Fuel Co., 195 Fed. 850, p. 853.

Coal entries are classed as preemptive in procedure, the filing of a declaratory statement giving exclusive privilege to purchase within a fixed time, but this does not make them preemption entries within the meaning and intent of section 7 of the act of March 3, 1891.

Garner v. Mulvane, 12 L. D. 336.

Herman v. Chase, 37 L. D. 590, p. 591.

A person who makes an application to purchase under this section without having filed a declaratory statement acquires no rights by virtue of an alleged prior possession as against an adverse claimant who filed his declaratory statement within the time prescribed by law.

Lezeart v. Dunker, 4 L. D. 96, p. 98.

7. CASH ENTRIES—PREFERENCE.

The right of the purchaser of land at a private cash entry is superior to a claim of actual possession continuously from a time antedating the date of such private purchase, though the necessary expenditure has been made in improving the land, but the declaratory statement under section 2348 was not filed until after the date of such private purchase, and where it appears that the person claiming under the possessory right has not proved a bona fide occupation of the land.

McDaniel v. Bell, 9 L. D. 15.

Under this and the following section coal lands, when subject to sale, may be disposed of by private cash entry, or a person opening and improving the same and in actual possession may acquire a preference right of entry by presenting his claim to the district land office within 60 days after the date of his actual possession and commencement of improvements and filing his declaratory statement.

Coal Lands, In re, 1 L. D. 540, p. 541.

The right of entry under this section has no reference to the rules governing the disposition of lands by private cash entry under section 2357 of the Revised Statutes.

Masterson, In re, 7 L. D. 172, p. 175.

8. CASH ENTRY NOT PERMITTED.

A person will not be permitted to make private entry of coal land under this section where he elects to proceed otherwise and where he files no application to make such private entry, and where no such entry could have been allowed until adverse proceedings were disposed of.

Walker v. Taylor, 23 L. D. 110, p. 112.

Cash entries for coal lands made by employees of a coal company, the money for which was paid by the coal company, and the land immediately conveyed to it, must be canceled, as such practice would enable one person or corporation acting through nominal entrymen to acquire an unlimited quantity of coal lands.

Peterson, In re, 6 L. D. 371.

See Northern Pac. Coal Co., In re, 7 L. D. 422.

9. PROCEEDINGS TO COMPEL ENTRY.

Persons making application to purchase coal lands, filing their declaratory statement and tendering the statutory price per acre for the land can not, on refusal of the local officers to permit the land to be entered at the statutory price because of a reappraisal made by the Secretary of the Interior, begin proceedings in a court either to restrain such local officers from otherwise disposing of the land or to compel them to accept the application and permit the purchase and entry at the statutory price.

Plested v. Abbey, 228 U. S. 42, p. 48.

See United States v. Hitchcock, 190 U. S. 316, p. 324.

10. ASSIGNEE'S RIGHT TO MAKE ENTRY.

The rule that a purchaser or assignee occupies the position and takes the same title as the entryman applies to an entry under the coal land laws.

Scott v. Sheldon, 15 L. D. 588, p. 590.

The fact that a defective entry can be corrected by the production of a proper affidavit of the entryman should not defeat the right of an assignee to recover if the original entryman can not be found to make such affidavit.

Davis, In re, 33 L. D. 313, p. 314.

See Anthracite Mesa Coal Min. Co. v. United States, 38 Ct. of Claims, 56.

11. ENTRY BY ONE PERSON FOR ANOTHER UNDER AGREEMENT.

This statute does not limit the dominion which the purchaser has over the land after its purchase or restrict his power of alienation, but it does denounce any prior agreement whereby one person is acting for another in the purchase.

United States v. Keitel, 211 U. S. 370, p. 391.

United States v. Munday, 222 U. S. 175, p. 183.

Olson v. United States, 133 Fed. 849, p. 852.

See United States v. Budd, 144 U. S. 154.

The entry provided for in this section is the cash entry made by applying to purchase the land and contemporaneously therewith making the payment for the same, and this entry excludes the right of a qualified person to make the entry in his own name with the money and for the benefit of a disqualified person.

United States v. Forrester, 211 U. S. 399, p. 403.

United States v. Allen, 180 Fed. 855, p. 861.

An entry or a patent for coal land to a person who is under contract to convey to another is void and should be canceled.

Mulvane, In re, 15 L. D. 146, p. 147.

See United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

Peterson, In re, 6 L. D. 371.

There is nothing in this or the following sections to prevent individuals from making entries with the intention of conveying to a corporation or to anyone else; but the act can be nullified if individuals or corporations are permitted to acquire more land than they are entitled to enter directly by employing dummies to make entries for their benefit.

United States v. Wells, 192 Fed. 870, p. 872.

United States v. Munday, 222 U. S. 175.

The statute imposes no limitation on the right of a purchaser who has acquired coal lands to sell the same, but the absence of such limitation to sell after acquisition will not prevent the enforcing of the express prohibition against more than one entry by the same person, as the right to sell what has been lawfully acquired does not imply authority to unlawfully acquire, in violation of an express prohibition

United States v. Keitel, 211 U. S. 370, p. 389.

United States v. Munday, 222 U. S. 175, p. 183.

A coal entry must be made in good faith and not for the benefit of another.

Dally, In re, 41 L. D. 295, p. 304.

See Brennan v. Hume, 10 L. D. 160.

Stough, In re, 41 L. D. 616, p. 619.

12. FRAUDULENT ENTRY.

Fraud in the procurement of coal lands of the United States is not cured by the fact that the price of the lands was paid to the United States.

United States v. Keitel, 211 U. S. 370, p. 394.

Coal entries procured by fraud may be set aside at the suit of the United States Government.

Garner v. Mulvane, 12 L. D. 336, p. 340.

See United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

Where fraud is charged as a ground for annulling a decision of the Land Department, setting aside an entry for coal lands, and in the issuance of a patent to an adverse claimant it must be shown that the alleged false testimony or forged documents affected the decision and led to a result which otherwise would never have been reached.

Durango Land, etc., Co. v. Evans, 80 Fed. 425, p. 429.

The fact that entries for coal lands were made with the knowledge and approval of officers of the General Land Office will not preclude the Secretary from determining whether such entries were legal or fraudulent.

Peterson, In re, 6 L. D. 371.

In an action by the United States against a corporation to cancel patents to coal lands on alleged fraudulent grounds, such corporation can not defend by showing that its stockholders purchased its stock in good faith and in ignorance of any defect in the title.

Wilson Coal Co. v. United States, 188 Fed. 545, p. 547.

13. COMBINATIONS AND CONSPIRACY.

A conspiracy to acquire coal lands from the United States by fraudulent means is a violation of the criminal statute, and a charge of such a conspiracy can be predicted upon acts made criminal after the enactment of the statute.

United States v. Keitel, 211 U. S. 370, p. 393.

See United States v. Hirsch, 100 U. S. 33.

Dealy v. United States, 152 U. S. 539.

Hyde v. Shine, 199 U. S. 62.

A pooling scheme made between different entrymen and embracing more than 320 acres of coal lands, whereby each member of the combination agrees to hold each and

every tract for the benefit of all, though the legal title is to remain in the several individuals, is unlawful.

United States v. Portland Coal, etc., Co., 173 Fed. 566.

United States v. Allen, 180 Fed. 855, p. 860.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 222.

Persons can not lawfully associate themselves together to enter tracts of 160 acres in severalty but to be held for the joint benefit of all in equal share, and patents issued on such entries may be canceled at the suit of the United States.

Dally, In re, 41 L. D. 295, p. 302.

An unlawful combination by several persons to obtain title to coal lands in violation of this statute is illegal from the beginning, and the fact that only two claims aggregating 320 acres were actually patented does not cure it of the vice, as public policy forbids that such a combination should succeed in whole or in part as to anyone concerned in the illegal acts.

United States v. Allen, 180 Fed. 855, p. 860.

Where several persons enter into a conspiracy to acquire title to coal lands for the benefit of themselves as an association and in making their declaratory statements and in doing the assessment work act in concert to acquire such excessive amount, they are guilty of conspiracy and the scheme is not purged of its fraudulent design by the fact that the corporation was unable to recover from the entryman money which they fraudulently diverted for the purchase of the land, nor was it relieved of its fraudulent character by the fact that the Government received for the lands the purchase price at which all coal lands are offered for sale.

Wilson Coal Co. v. United States, 188 Fed. 545, p. 547.

Where two or more persons enter into an unlawful combination to secure coal entries on behalf of a single association, the fact that only two claims, aggregating 320 acres, are actually patented, does not make such patents valid, as the unlawful combination renders illegal the entire proceedings.

Dally, In re, 41 L. D. 295, p. 302.

Kennedy v. Lonabaugh, 19 Wyo. 352.

A general plan to secure entries to be made in behalf of a single association in excess of 320 acres is unlawful.

Dally, In re, 41 L. D. 295, p. 302.

In a prosecution against residents of the State of New York charged with conspiring to defraud the United States by obtaining coal lands to an amount larger than that described by this section, and for this purpose employ dummy entrymen to make coal entries in the State of Wyoming, it is not necessary in order to justify a conviction of the New York residents to prove that such dummy entrymen were coconspirators.

United States v. Wells, 192 Fed. 870, p. 873.

14. INDICTMENT FOR CONSPIRACY—PROOF.

Under an indictment charging certain residents of the State of New York with forming a conspiracy to obtain an excessive amount of coal lands in the State of Wyoming, it is not necessary to aver or prove as an essential step in the conspiracy that any of the defendants were physically present in the State of Wyoming, or that they were personally acquainted with each other prior to the date the entry applications were verified by them in the State of New York, and they are indictable in the State of Wyoming, if the conspiracy was made there, although the first overt act was committed in the State of New York, and the fact that they were indictable in the latter State does not preclude an indictment in the State of Wyoming.

United States v. Wells, 192 Fed. 870, p. 873.

15. CANCELLATION OF ENTRY FOR FRAUD—EFFECT AND RIGHTS.

Persons conspiring to make a fraudulent entry of coal lands under this and the following sections are not, on the cancellation of the entry, entitled to the repayment of the purchase money, as in such case the entry was not "erroneously allowed," but was canceled because of the fraud.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 224.
 Mulvane, In re, 15 L. D. 146, p. 147.

16. ENTRY BY ONE FOR BENEFIT OF ANOTHER—EFFECT AND VALIDITY.

An entry can not be made under this section by one person for the use and benefit of another.

Peterson, In re, 6 L. D. 371, p. 373.
 Northern Pac. Coal Co., In re, 7 L. D. 422, p. 423.

An entry on coal lands must be shown to be made in good faith, and it must not be made for the benefit of another.

Brennan v. Hume, 10 L. D. 160, p. 163.

A single person will not be permitted to make a cash coal entry of one tract under the individual right of a purchaser and of another tract in the capacity of an assignee.

Ludlam, In re, 17 L. D. 22.

An entry made under this section for the use and benefit of another is illegal and must be canceled.

Strafford, In re, 21 L. D. 300, p. 302.
 Dally, In re, 41 L. D. 295, p. 304.

The coal-land laws clearly contemplate that an entry of coal lands must be made in good faith in the entryman's interest and not for the benefit of another.

Oviatt, In re, 35 L. D. 235, p. 237.
 See McGillicuddy v. Tompkins, 14 L. D. 633.
 Conner v. Terry, 15 L. D. 310.

A sale of coal land claimed at the execution of the final proof, but prior to its filing and the payment of the purchase money, does not necessarily warrant the conclusion that the entry was made for the use and benefit of another.

Durango Land, etc., Co., In re, 18 L. D. 382.
 Gullett v. Durango Land, etc., Co., 26 L. D. 413, p. 415.

Each individual entryman or association must show that the entry is made in his or their own exclusive behalf, and this is necessary in order that the law may be properly administered and to prevent nominal entrymen with money furnished by disqualified persons or associations from purchasing large bodies of vacant coal land.

Oviatt, In re, 35 L. D. 235, p. 237.
 Dally, In re, 41 L. D. 295, p. 304.

An application to purchase coal land made in the interest of an undisclosed disqualified principal will not be permitted.

Dally, In re, 41 L. D. 295, p. 304.
 See McGillicuddy v. Tompkins, 14 L. D. 633.

An entry of coal land under this section must be held for the use and benefit of the entryman himself.

Strafford, In re, 21 L. D. 300, p. 302.
 See Union Coal Co., In re, 17 L. D. 351.

Restrictions of this section forbid individuals and associations from acquiring public coal land in excess of the quantities prescribed, whether directly by entries in their own name or indirectly by entries for their benefit in the names of others.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 224.
 Stough, In re, 41 L. D. 616, p. 619.

See *United States v. Trinidad Coal, etc., Co.*, 137 U. S. 169.
United States v. Keitel, 211 U. S. 370.
United States v. Pennington, 211 U. S. 389.
United States v. Mendenhall, 211 U. S. 377.

There is no prohibition, express or implied, in the coal-land law against an entry by a qualified person for the benefit of another person or association where he or it is qualified to make an entry in his or its own name and is not seeking to evade restriction in respect to quantity.

United States v. Home Coal, etc., Co., 300 Fed. 922, p. 917.

17. ENTRY BY ONE FOR BENEFIT OF AN ASSOCIATION—EFFECT.

The procurement of qualified persons to make coal entries for the benefit of an association renders such entries invalid.

Dally, In re, 41 L. D. 295, p. 303.

See *Peterson, In re*, 6 L. D. 371, p. 373.

Kennedy v. Lonabough, 19 Wyo. 352.

A coal entry by a qualified entryman in the interest of a disqualified person, or in the interest of an association some of whose members are disqualified, is illegal.

Dally, In re, 41 L. D. 295, p. 301.

See *United States v. Trinidad Coal, etc., Co.*, 137 U. S. 169, p. 168.

United States v. Keitel, 211 U. S. 370, p. 389.

United States v. Lonabough, 157 Fed. 314.

18. ENTRY FOR BENEFIT OF CORPORATION.

Entries by persons qualified to make coal entries under this section for the benefit of a corporation will not be permitted.

Peterson, In re, 6 L. D. 371, p. 372.

Entrymen employed by a mining company to make coal-land entries paid for by such mining company will not be permitted, as the recognition of such a practice would enable one person or corporation to acquire, under sanction of the Land Department, an unlimited quantity of coal lands or an entire coal field, which is not permitted under the law.

Peterson, In re, 6 L. D. 371, p. 373.

See *Garner v. Mulvane*, 12 L. D. 336, p. 340.

Coal entries may be made on behalf of a corporation, provided the corporation and each of the persons in whose interest the entry was directly or indirectly made possessed the requisite qualification.

Anderson Coal Co., In re, 41 L. D. 337, p. 343.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 225.

See *Carthage Fuel Co., In re*, 41 L. D. 21.

Separate coal locations made and separate tracts entered by different members of an association, with the understanding and under an agreement among the locators and entrymen that the land so located and entered should be held for the common use and benefit of all the members in the association, and under an understanding and agreement that the claims so located and entered for the common use and benefit of all should be consolidated into one property and taken over by a corporation to be organized by the members of the association composed of such locators and entrymen, such separate locations and entries being merely to effect a colorable compliance with the coal-mining statutes, are illegal.

Scotfield, In re (Cunningham Claims), 41 L. D. 176, p. 220.

See 33 Stat. 525, April 28, 1904, pp. 783, 886.

19. TRANSFER AFTER ENTRY—RIGHTS OF ASSIGNOR AND ASSIGNEE.

An entryman of coal lands under this and the succeeding sections is not precluded, after proving his entry, from selling or giving it away to whom he pleases, neither is an individual or corporation precluded from buying as many entries actually made by others as he or it pleases, nor does the intent of the person at the time of making the entry change the rule.

Ireland v. Henkle, 179 Fed. 993, p. 994.

Persons acquiring coal lands pursuant to statutes and thereafter obtaining a patent for the same are at liberty thereafter to dispose of the same as they see fit.

Wilson Coal Co. v. United States, 188 Fed. 545, p. 547.

The statute imposes no limitation on the right of a purchaser acquiring coal lands from the United States to sell or dispose of the same after he has become the owner.

United States v. Keitel, 211 U. S. 370, p. 389.

United States v. Munday, 222 U. S. 175, p. 183.

The sale of coal land after final proof is made is not prohibited by statute, and assignments at any time of the right to purchase are recognized by the department.

Gullett v. Durango Land, etc., Co., 26 L. D. 413, p. 416.

An assignee of a coal entry will be permitted to prove up and purchase, if it shows a perfect right as assignee to do so.

Kerr v. Utah-Wyoming Imp. Co., 2 L. D. 727.

A person qualified to acquire title to coal lands can not obtain patent after assigning his rights to a third person who has taken possession of the land on the claim that such third person is an agent only, when the contract of assignment shows a disposal of present rights and a contract for the sale and transfer of the land in fee when patent is issued.

Kerr v. Utah-Wyoming Imp. Co., 10 C. L. O. 207.

20. ENTRY UNDER SOLDIERS' ADDITIONAL HOMESTEAD LAW.

Public lands known to be chiefly valuable for their deposits of coal are not subject to acquisition under the soldiers additional homestead law, but only under the coal land law, and lands known to be chiefly valuable for deposits of coal may be purchased as coal land.

Leonard v. Lennox, 181 Fed. 760, p. 761.

21. CORPORATION MAY PURCHASE FROM ENTRYMEN.

A corporation that is not permitted to purchase coal lands from the United States may contract from individuals to purchase such lands of them after their purchase from the Government, and under such contract may pay all the expenses and the contract price to be paid to the Government, and receive from such individuals a valid title to such coal lands.

United States v. Trinidad Coal, etc., Co., 37 Fed. 180.

The rights of individuals, by reason of their alleged possession of a mining claim, may be transferred to a corporation, and such possession becomes the possession of the company as against the declarant where all the parties so regard it, and where the company proceeds to make private cash entry under this section, instead of proving the entry under the following section.

Hawes, In re, 5 L. D. 224, p. 226.

Kerr v. Utah-Wyoming Imp. Co., 2 L. D. 727.

D. AREAS OF COAL LAND ACQUIRED.

1. PURPOSE OF RESTRICTIONS.
2. QUANTITY PERMITTED TO ONE PERSON AND ASSOCIATION.
3. QUANTITY ENTERED BY CORPORATION.
4. PERSONS LIMITED TO SINGLE ENTRY.
5. WHEN SECOND ENTRY PERMITTED.

1. PURPOSE OF RESTRICTIONS.

The acquisition of coal lands has been the subject of special statutory restrictions as to persons who were entitled to purchase, the quantity which might be purchased, and the price paid.

United States v. Diamond Coal, etc., Co., 191 Fed. 786, p. 791.

The object of the restrictions of this section as to the quantity of coal land to be entered by an individual or an association of persons is evidently to prevent monopolies in the coal lands.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 169.

United States v. Keitel, 211 U. S. 370, p. 389.

United States v. Munday, 222 U. S. 175, p. 182.

Watkins v. Garner, 13 L. D. 414, p. 416.

The limitations upon the area of coal land that may be acquired under this section are supplemented by the disqualification of the entryman under section 2350, and together they prevent the acquisition of an unlimited area of coal lands.

Dally, In re, 41 L. D. 295, p. 304.

Stough, In re, 41 L. D. 616, p. 620.

See *Scofield, In re (Cunningham Claims)*, 41 L. D. 176, p. 226.

It is a fraud upon the Government for an individual or an association of individuals to undertake to acquire a larger area of public land under this act than such party or association is entitled to in their own right.

United States v. Trinidad Coal Co., 137 U. S. 160.

United States v. Keitel, 211 U. S. 370.

See *United States v. Munday*, 222 U. S. 175.

United States v. Barber Lumber Co., 172 Fed. 948, p. 962.

United States v. Portland Coal, etc., Co., 173 Fed. 566.

United States v. Doughten, 186 Fed. 226, p. 230.

Wilson Coal Co. v. United States, 188 Fed. 545, p. 547.

2. QUANTITY PERMITTED TO ONE PERSON AND ASSOCIATION.

Each individual person is permitted to enter not exceeding 160 acres, while an association of persons, who are severally qualified as citizens of the United States, may enter not exceeding 320 acres.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 169.

United States v. Keitel, 211 U. S. 370, p. 387.

Ghost v. United States, 168 Fed. 841, p. 844.

United States v. Wells, 192 Fed. 870, p. 872.

Watkins v. Garner, 13 L. D. 414, p. 415.

McWilliams v. Green River Coal Ass'n., 23 L. D. 127, p. 128.

Dally, In re, 41 L. D. 295, p. 301.

Northern Pac. Coal Co., In re, 7 L. D. 422.

Persons possessing the qualifications named in this statute may enter by legal subdivisions any number of acres not exceeding 160, but no person is entitled to more than one preemptory right, and this provision is substantially the same as that under the coal land statutes.

Masterson, In re, 7 L. D. 172.

Under this and succeeding sections any citizen above the age of 21 years or any association of persons severally qualified may enter any quantity of vacant coal lands of the United States, not exceeding 160 acres to each individual person, or 320 acres to an association, but there can be but one entry by the same person or association of persons, and no association of persons, any member of which shall have made an individual entry, shall enter or hold any other lands.

Ireland v. Henkle, 179 Fed. 993.

This and the following sections, commonly known as the coal laws, provide that every person over the age of 21 years, who is a citizen of the United States or who has declared his intention to become such, may purchase from the United States 160 acres of coal land, or an association of two or more persons, 320 acres, and no more, except that an association of four or more persons, which has expended the sum of \$5,000 in opening and improving a mine, may purchase 640 acres.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 221.

The coal land law does not expressly prohibit an entry by one person for the benefit of another, but it does limit the quantity of land that may be acquired by one person and the quantity that may be acquired by an association of persons under different circumstances.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 224.

Stough, In re, 41 L. D. 616, p. 619.

See *United States v. Trinidad Coal, etc. Co.*, 137 U. S. 160.

3. QUANTITY ENTERED BY CORPORATION.

Congress did not intend to limit the right of entering coal lands to 160 acres in the case of an individual and to 320 acres in the case of unincorporated associations and permit a corporation by means of entries made for its benefit in the names of its agents, officers, stockholders, or employees, to acquire coal lands without any restrictions whatever as to quantity.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 169.

United States v. Allen, 180 Fed. 855, p. 860.

Under this section persons can not lawfully associate themselves together to enter tracts of 160 acres in each in severalty, for the purpose of holding it for the joint benefit of all in equal shares, and the United States may maintain an action to cancel patents issued to such persons.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

See *United States v. Portland Coal, etc., Co.*, 173 Fed. 566, p. 569.

4. PERSONS LIMITED TO SINGLE ENTRY.

This and the following sections, the act of June 6, 1900 (31 Stat. 658), and the act of April 28, 1904 (33 Stat. 525), are in *pari materia* and must be construed together, and so construed they do not permit more than one coal entry by a single qualified entryman.

United States v. Munday, 222 U. S. 175, p. 184.

One person can not lawfully make a coal entry in the interest of another who has had the benefit of the law, or in the interest of an association where it or any of its members has had the benefit of the law, or in the interest of a person or an association where neither has had such benefits, but is seeking, through entry made or to be made by others, to acquire a greater quantity of land than is permitted by law.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 224.

Stough, In re, 41 L. D. 616, p. 619.

No person who has, in his individual capacity or as a member of an association, taken the benefit of this act can enter or hold any other lands thereunder.

Kimball, In re, 3 C. L. O. 50.

The departmental regulations provide that the right to enter or hold coal lands under this and the following sections is exhausted by the previous acquisition of a preference right of entry "unless sufficient cause for the abandonment thereof is shown."

Anderson Coal Co., In re, 41 L. D. 337, p. 343.

An association of persons entering a less number of acres of coal land than is permitted will not be entitled to make a second entry.

Kimball, In re, 3 C. L. O. 50.

Under the act of 1873 (17 Stat. 607), and section 2347 or 2348, a corporation is a person and can make but one entry.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 169.

United States v. Munday, 222 U. S. 175, p. 181.

The legislation of Congress subsequent to the coal-land laws indicates that Congress in prohibiting more than one entry contemplated the distinction between an entry made by one for himself with the full power of disposal after entry, and an entry made ostensibly for himself but in reality for another.

United States v. Keitel, 211 U. S. 370, p. 390.

No doubt exists as to the restrictions imposed upon the entry and purchase of vacant coal lands, and an association of persons is authorized to purchase not exceeding 320 acres, and only one entry can be made by the same person or association of persons, and no association of persons any member of which shall have taken the benefit of such sections shall enter or hold any other coal land.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

United States v. Allen, 180 Fed. 885, p. 860.

5. WHEN SECOND ENTRY PERMITTED.

A second coal filing by the same person may properly be made where sufficient reason is shown for the failure of such person to perfect title to the tract embraced in his first filing.

Anderson Coal Co., In re, 41 L. D. 337, p. 343.

See *Burrell, In re*, 29 L. D. 328.

A person who previous to an application was the owner and intermediate assignor of a preference right to enter other lands is not disqualified from making a coal entry.

McConnell, In re, 18 L. D. 414, p. 416.

E. CLASSIFICATION AND WITHDRAWAL.

1. COAL LANDS CLASSIFIED AS MINERAL.
2. COAL LANDS WITHDRAWN FROM ENTRY UNDER NONMINERAL LAWS.
3. WITHDRAWALS—EFFECT ON OTHER GRANTS.

1. COAL LANDS CLASSIFIED AS MINERAL.

Under this and the following sections coal lands are, by the authority of Congress, classed as mineral lands, and the laws which provide for their disposal are likewise made part of the mining laws.

Crowder, In re, 30 L. D. 92, p. 95.

See *Mullan v. United States*, 118 U. S. 271, p. 278.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 324.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233.

Brown v. Northern Pac. R. Co., 31 L. D. 29, p. 31.

A tract of land which had been worked as a mine for many years and had upon its surface all the appliances necessary for reaching, taking out, and delivering the coal must be classified as known coal lands.

Mullan v. United States, 118 U. S. 271, p. 277.

See McLoughlin v. United States, 107 U. S. 526, p. 528.

Western Pac. R. Co. v. United States, 108 U. S. 510.

2. COAL LANDS WITHDRAWN FROM ENTRY UNDER NONMINERAL LAWS.

By this and the following sections the character of coal lands noted on surveys and public plats as such is to be made known, and such lands are withdrawn from entry under the preemption and homestead acts.

Colorado Coal, etc., Co. v. United States, 123 U. S. 307, p. 325.

Coal lands are not subject to homestead entries.

United States v. Diamond Coal, etc., Co., 191 Fed. 786, p. 791.

The withdrawal of lands from coal entry shall not impair any right acquired in good faith under the coal-land laws existing at the date of such withdrawal.

Stevens, In re, 37 L. D. 723, p. 726.

Lands withdrawn as coal lands may be entered for other purposes, but a hearing must be had to determine the character of the land after due notice, and the notice must show that testimony will be taken to determine the question as to whether land is or is not mineral in character, and copies of the notice must be posted on each 40-acre lot or subdivision.

Sanborn, In re, 10 C. L. O. 254.

By the withdrawal of lands under the act of June 17, 1902 (32 Stat. 388), and making them subject to entry under the homestead laws only, Congress did not mean to subject coal lands within the areas of such withdrawals to homestead entry, and such withdrawals under the "second form" do not affect coal lands.

Crafts, In re, 36 L. D. 138, p. 139.

Lands that are in fact coal lands are subject to disposition under the coal-land laws, though they are embraced within the geographical limits of a withdrawal under the act of June 17, 1902 (32 Stat. 388).

Crafts, In re, 36 L. D. 138, p. 140.

3. WITHDRAWALS—EFFECT ON OTHER GRANTS.

An application to enter coal lands under this and the succeeding sections can not be granted for lands withdrawn from settlement under a railroad grant.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 488.

The reservation as to minerals in sections 16 and 36 can have no effect on locations made prior to the survey.

Lezeart v. Dunker, 4 L. D. 96, p. 98.

Lands of known coal character are excepted from school grants to States.

Ostenfeldt, In re, 41 L. D. 265, p. 267.

The right of a State at the date of its admission did not attach to lands known to be coal lands.

Burkhart, In re, 15 C. L. O. 38.

Ramey, In re, 15 C. L. O. 194.

See Mullan v. United States, 118 U. S. 271.

F. COAL LANDS—VALUABLE FOR MINERAL.

1. COAL LANDS AS MINERAL LANDS.
2. GOOD FAITH AND BELIEF OF PURCHASER.
3. LAND VALUABLE FOR COAL—MEANING.
4. DETERMINATION OF MINERAL CHARACTER—EFFECT.
5. PROOF OF PRESENCE OF COAL.
6. PROOF INSUFFICIENT TO SHOW COAL.
7. MINERAL CHARACTER DETERMINED FROM ACTUAL PRODUCTION.
8. "KNOWN MINES"—WHAT CONSTITUTES.
9. OPENING COAL MINES—OWNERSHIP OF COAL.
10. RETURN OF SURVEYOR GENERAL—EFFECT.
11. MINERAL AND AGRICULTURAL APPLICANTS.
12. MINERAL DISCOVERED AFTER SALE—EFFECT.

1. COAL LANDS AS MINERAL LANDS.

Lands chiefly valuable for deposits of coal are mineral in character.

Mullan v. United States, 118 U. S. 271, p. 277.

Crowder, In re, 30 L. D. 92.

Brown v. Northern Pac. R. Co., 31 L. D. 29.

Crafts, In re, 36 L. D. 138, p. 139.

Coal lands are mineral lands.

McKean v. Buell, *Copp's Min. Lands* 343, p. 345.

The Revised Statutes of the United States provide for the sale of coal under the general term "mineral lands and mining resources," showing that coal lands are mineral lands.

Colorado, In re, *Copp's Min. Lands* 341, p. 342.

Coal entries are made under this section, but if the lands are not mineral they are not subject to entry under this section.

Commissioners of Kings County v. Alexander, 5 L. D. 126.

Under this and the following sections coal lands are subject to preemption and entry precisely the same as agricultural lands except as to price and as to the amount.

Alabama, In re, 6 L. D. 493, p. 501.

2. GOOD FAITH AND BELIEF OF PURCHASER.

This statute plainly invites individuals and associations to enter upon the public lands in search of coal deposits and on discovery of such deposits to take possession of the land and to expend time, labor, and means in opening and developing the same, if there is an honest intent to purchase and develop the land according to the statute, if the coal proves to be such as to give character and value thereto; and a person who in good faith accepts and acts upon this statutory invitation, with an intent to purchase if justifiable under its provisions, must be regarded as in the exercise of a privilege conferred by law and is not a trespasser.

Ghost v. United States, 168 Fed. 841, p. 845.

3. LAND VALUABLE FOR COAL—MEANING.

The uniform interpretation of this statute has been that it does not permit of the purchase of public lands as coal lands unless they contain coal of such quality and in

such quantity as to reasonably warrant the conclusion that they are capable of being profitably mined for coal.

Ghost v. United States, 168 Fed. 841, p. 845.

Savage v. Boynton, 12 L. D. 612.

Rucker v. Knisley, 14 L. D. 113.

Scott v. Sheldon, 15 L. D. 361.

Hamilton v. Anderson, 19 L. D. 168.

Davis v. Tanner, 20 L. D. 220.

McKibben v. Gable, 34 L. D. 178, p. 182.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, pp. 325, 328.

The former regulations of the Department of the Interior required an applicant to make proof at the time of the actual purchase of coal lands that such lands were chiefly valuable for coal, but the present regulations require proof only that the land contains workable deposits of coal.

Ghost v. United States, 168 Fed. 841, p. 845.

While the mineral character of land must be known at the time of a nonmineral entry, to make such entry invalid, this does not mean a positive, absolute certainty that can only be shown by actual exposure or uncovering, nor that temporary distance from market makes unprofitable the mining of any but a very thick vein or deposit; and in such case regard must be had to the proof of which the subject by its nature is susceptible and such proof comprises visible exposure of outcrop, the dip of vein and surrounding geological conformations.

United States v. Diamond Coal, etc., Co., 191 Fed. 786, p. 795.

4. DETERMINATION OF MINERAL CHARACTER—EFFECT.

A determination at one time of the mineral character of land does not necessarily preclude a subsequent inquiry as to the character of the same tract where a change in the character of the land is alleged, but the proof must be clear and convincing in order to secure a further hearing.

Town of Aldridge v. Craig, 25 L. D. 505, p. 508.

See *Stinchfield v. Pierce*, 19 L. D. 12.

Davis v. Tanner, 20 L. D. 220.

Barnstetter v. Central Pac. R. Co., 21 L. D. 464.

Wilson v. Davis, 25 L. D. 514.

The determination of a contest between a State and an entryman of coal lands settles conclusively the mineral character of the land at the time of the entry and up to the date of the hearing.

Town of Aldridge v. Craig, 25 L. D. 505, p. 507.

A determination of the mineral character of land based chiefly or wholly upon the acceptance of certain boundaries which do not inclose the mineral deposits is not conclusive.

Wilson v. Davis, 25 L. D. 514, p. 515.

5. PROOF OF PRESENCE OF COAL.

Where lands applied for are clearly mineral in character the mere fact of their close proximity to a city is no reason for refusing an entry under the mining laws, yet the fact of the increased value of such lands by reason of their proximity to a city may account for an attempt to acquire title under the mining laws when their mineral character is not shown.

Commissioners of Kings County v. Alexander, 5 L. D. 126, p. 128.

Proof that coal has actually been produced as a present fact and that a vein of coal underlies the tract applied for at a depth of 50 feet and at the most remote point from the coal ravine where it outcrops near the surface to a thickness of 6 feet, together with

the testimony of a practical miner that such coal vein extends under the whole tract, is sufficient to prove the land to be chiefly valuable for coal under the statute.

Rucker v. Knisley, 14 L. D. 113, p. 115.

In an application for a coal entry the proof must show satisfactorily the coal character of the land and not a mere theory that the land contains coal.

Johns v. Marsh, 15 L. D. 196, p. 198.

Lands are considered mineral lands within the meaning of the statute prohibiting the entry of mineral lands under nonmineral land laws where there is a nearby extensive coal deposit of commercial value, the outcrop line of which is easily traced or discoverable and the dip of the coal veins is well known, and the surrounding geological formations show such coal veins extent under the land in question, and the lands themselves are of little agricultural value, but have a much greater value because of the belief in their coal contents founded on evidences upon which men in business were accustomed to rely, and where the entryman paid many times the value of the land for agricultural or grazing purposes; and a patent for such land issued under such circumstances will be canceled at a suit of the Government.

United States v. Diamond Coal, etc., Co., 191 Fed. 786, p. 798.

6. PROOF INSUFFICIENT TO SHOW COAL.

Land not valuable for coal and from which there has been no actual production of coal, and the presence of coal deposits in the vicinity is not sufficient to characterize it as coal lands, is not mineral in character, and is chiefly valuable for agricultural purposes.

Scott v. Sheldon, 15 L. D. 361, p. 362.

See Dughi v. Harkins, 2 L. D. 721.

Savage v. Boynton, 12 L. D. 612.

A coal entry can not be allowed where the proof shows that no coal has ever been mined for market, and where it shows only an outcrop in one corner of a 40-acre tract, but no mine has ever been opened, and though the vein might be continuous, yet merchantable coal could not be found within the lines of the land applied for.

Davis v. Tanner, 20 L. D. 220, p. 222.

In an application for an entry of land as mineral the proof of its mineral character must be specific and based upon the actual production of mineral, and it is not sufficient to show that other lands in the vicinity or adjoining are mineral in character, and that the land in controversy may hereafter develop mineral sufficient to show its mineral character, but this must be shown as a present fact.

Warren v. Colorado, 14 L. D. 681, p. 684.

Dughi v. Harkins, 2 L. D. 721, p. 722.

Commissioners of Kings County v. Alexander, 5 L. D. 126.

Downs, In re, 7 L. D. 71.

The fact that coal has been discovered in the vicinity of lands sought to be patented, and at one place about 25 or 30 tons had been taken out from time to time for local domestic uses, but there is no proof showing that coal is being or has been mined anywhere in the immediate section for merchantable purposes, is not sufficient to entitle the applicant to a patent.

Savage v. Boynton, 12 L. D. 612, p. 614.

Commissioners of Kings County v. Alexander, 5 L. D. 126.

Proof of the mineral character of land must be specific and show actual production of mineral therefrom, and it is not sufficient to show that lands in the neighborhood or adjoining contain coal or that the lands in question may hereafter be found to contain coal.

Savage v. Boynton, 12 L. D. 612, p. 614.

See Dughi v. Harkins, 2 L. D. 721.

Commissioners of Kings County v. Alexander, 5 L. D. 126.

Lands are not subject to coal entry where the testimony shows that no coal has ever been mined thereon and there are no reliable surface indications that coal or other mineral exists on land in sufficient quantities to make it more valuable for mining than for agricultural purposes.

Savage v. Boynton, 12 L. D. 612, p. 613.

The mineral character of lands located under this section is not determined by proof of the fact that coal measures extended under the land, but where a shaft 90 feet deep shows that no coal had been found and where no coal has been actually found upon the land covered by the entry.

Commissioners of Kings County v. Alexander, 5 L. D. 126, p. 127.

A coal entry will not be permitted where the land has not been returned as mineral and merely on proof that large veins of coal have been developed in the near vicinity, and that the ground is mineral land but there are no outcroppings.

Williams, In re, 11 L. D. 462.

7. MINERAL CHARACTER DETERMINED FROM ACTUAL PRODUCTION.

An applicant for a coal entry must make it appear that the land in dispute is valuable for its mineral, and the proof must be specific and based upon actual production.

Jones v. Driver, 15 L. D. 514, p. 518.

See *Commissioners of Kings County v. Alexander*, 5 L. D. 126.

Under this section, proof of the mineral character of land must be specific and based upon the actual production of mineral, and it is not sufficient to show that neighboring or adjoining lands are mineral in character and that the lands in controversy may develop minerals, but the proof must show as a present fact that the lands are mineral, and this must appear from actual production of mineral and from a theory that the lands may produce mineral.

Commissioners of Kings County v. Alexander, 5 L. D. 126.

See *Hooper v. Ferguson*, 2 L. D. 712.

Dughi v. Harkins, 2 L. D. 721.

Roberts v. Jepsom, 4 L. D. 60.

Cleghorn v. Bird, 4 L. D. 478.

Lientz v. Victor, 17 Cal. 271.

Alford v. Barnum, 45 Cal. 482.

Under the rules of the department the land must appear mineral in character as a present fact and from actual production of mineral.

Hamilton v. Anderson, 19 L. D. 168, p. 169.

See *Rucker v. Knisley*, 14 L. D. 113.

McWilliams v. Green River Coal Assn., 23 L. D. 127.

The mineral character of the land in controversy must appear from actual production of mineral and not from any theory that it may produce it.

Scott v. Sheldon, 15 L. D. 588, p. 589.

See *Savage v. Boynton*, 12 L. D. 612.

Davis v. Weibbold, 139 U. S. 507.

A coal-land application may be sustained on proof that coal had been actually produced as a present fact to a sufficient extent to indicate the character of the land, and where such land is tapped by a shaft or drill the theory is reduced to fact and coal is found to exist.

Scott v. Sheldon, 15 L. D. 588, p. 589.

See *Rucker v. Knisley*, 14 L. D. 113.

The mere boring of holes with a diamond drill does not constitute development and is insufficient to prove the land valuable for coal within the meaning of this section.

McGillicuddy v. Tompkins, 14 L. D. 633, p. 635.

Active mining operations are not essential to establish the mineral character of land.

Johns v. Marsh, 15 L. D. 196.

Aspen Consol. Min. Co. v. Williams, 23 L. D. 34, p. 48.

It is not necessary that there be an actual development of coal on each 40-acre subdivision of the 160 acres for which entry is permitted under the mining laws.

Hamilton v. Anderson, 19 L. D. 168, p. 169.

McWilliams v. Green River Coal Assn., 23 L. D. 127.

Reed v. Nelson, 29 L. D. 615, p. 620.

8. "KNOWN MINES"—WHAT CONSTITUTES.

It is not sufficient to constitute "known mines" of coal within the meaning of this statute that there should merely be indications of coal beds or coal fields of greater or lesser extent, or of greater or lesser value, as shown by outcroppings.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.

See *Olive Land & Dev. Co. v. Olmstead*, 103 Fed. 568, p. 578.

Abercrombie, In re, 6 L. D. 393.

Frees v. Colorado, 22 L. D. 510.

Chormicle v. Hiller, 26 L. D. 9, p. 15.

Rucker v. Knisley, 14 L. D. 113, p. 114.

To constitute known mines there should be ascertained coal deposits of such extent and value as to make the land more valuable to be worked for coal than for agricultural purposes, and conditions occurring after the sale, in the way of new discoveries, making it more profitable to work the land for its coal, can not affect the title.

Abercrombie, In re, 6 L. D. 393.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 17.

To entitle an applicant to a patent for coal lands on the theory that it contains known mines there must be upon the land ascertained coal deposits of such extent and value as to make the land more valuable to be worked as a coal mine under existing conditions than for merely agricultural purposes, but mere surface indications of the existence of veins of coal does not constitute a mine, and it is not sufficient to prove that the land will ever be under any condition sufficiently valuable on account of its coal deposits to be worked as a mine.

Downs, In re, 7 L. D. 71, p. 74.

See *Deffeback v. Hawke*, 115 U. S. 392, p. 404.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

If there are not actual known mines upon the land capable of being profitably worked for their product so as to make the land more valuable for mining than for agriculture, such lands can not be acquired under the mining statutes.

Warren v. Colorado, 14 L. D. 681, p. 684.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431.

See *Iron Silver Min. Co. v. Mike & Starr, etc.*, Min. Co., 143 U. S. 394.

9. OPENING COAL MINE—OWNERSHIP OF COAL.

An individual or association rightfully engaged in opening and developing coal deposits upon public lands, with the honest intention of purchasing the land as coal lands if the deposit is sufficient to justify it, becomes the owner of the coal removed in the proper course of the work and may sell it, though he could not lawfully remove such coal for purposes of sale except where he is acting in good faith and in the honest intention to purchase the coal lands if the deposit was sufficient to warrant the payment of the price.

Ghost v. United States, 168 Fed. 841, p. 846.

Scofield, In re (*Cunningham Claims*), 41 L. D. 176, p. 230.

10. RETURN OF SURVEYOR GENERAL—EFFECT.

Lands embraced in a homestead application not having been returned by the surveyor general as mineral and being suitable in part for agriculture are prima facie agricultural lands, and the burden of proof rests upon the contestant to show the coal character of such lands.

Savage v. Boynton, 12 L. D. 612, p. 614.

See *Hooper v. Ferguson*, 2 L. D. 712.

Creswell Min. Co. v. Johnson, 8 L. D. 440.

Locations made on coal lands prior to survey are not affected by subsequent survey and reservation of sections 16 and 36 for school purposes.

Lezeart, In re, 4 L. D. 96.

An affidavit of protest is an offset to a nonmineral affidavit and shifts the burden of proving the land more valuable for agriculture than mining where the land was designated in the public survey as coal land.

Dickinson v. Capen, 14 L. D. 426.

See *Mulligan v. Hansen*, 10 L. D. 311.

11. MINERAL AND AGRICULTURAL APPLICANTS.

On the question whether land is more valuable for coal than for agricultural purposes it is not sufficient that there are surface indications of the existence of veins of coal, and such proof does not show that the land will ever, under any conditions, be sufficiently valuable on account of its coal deposits to be worked as a mine.

Jones v. Driver, 15 L. D. 514, p. 518.

See *Colorado Coal & Iron Co. v. United States*, 123 U. S. 307.

Where evidence is sufficient to show that land in controversy is coal land the title can not be acquired to it under the preemption laws.

Hamilton v. Anderson, 19 L. D. 168, p. 169.

The law favors a mineral claimant rather than one who seeks to purchase the land under the timber act and requires the former to pay four times as much for the land as the latter and eight times if it is within the designated distance of a railroad.

Smith v. Buckley, 15 L. D. 321, p. 322.

See *Porter v. Throop*, 6 L. D. 691.

12. MINERAL DISCOVERED AFTER SALE—EFFECT.

A change in the conditions which occur subsequently to the sale whereby new discoveries are made or by means whereof it may become profitable to work the vein as a mine can not affect the title as it passed at the time of the sale, as the question must be determined according to the facts existing at the time of the sale.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.

Shaw v. Kellogg, 170 U. S. 312, p. 332.

See *Mullan v. United States*, 118 U. S. 271, p. 278.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 578.

Abercrombie, In re, 6 L. D. 393.

Rea v. Stephenson, 15 L. D. 37, p. 38.

Chormicle v. Hiller, 26 L. D. 9, p. 15.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 15.

Riley, In re, 33 L. D. 68, p. 70.

A change in the condition occurring subsequent to sale, whereby discoveries are made or by means whereof it may become profitable to work the veins and mines, can not affect the title as it passed at the time of the sale.

Kern Oil Co. v. Clarke, 30 L. D. 550, p. 559.

See *Colorado Coal & Iron Co. v. United States*, 123 U. S. 307.

See *Harnish v. Wallace*, 13 L. D. 108.

Arthur v. Earle, 21 L. D. 92.

Reid v. Lavallee, 28 L. D. 100, p. 102.

McCormack v. Night Hawke & Nightingale Gold Min. Co., 29 L. D. 373.

Kern Oil Co. v. Clarke (on review), 31 L. D. 288.

Whether land is agricultural or valuable for coal must be determined according to the conditions existing at the time an applicant complies with the statute, and if then chiefly valuable for coal his right will not be disturbed by subsequent changes in conditions.

Hirshfeld v. Chrisman, 40 L. D. 112, p. 114.

See *Leonard v. Lennox*, 181 Fed. 760.

G. PRICE OF COAL LANDS.

1. DISTANCE FROM RAILROAD—MINIMUM PRICE.
2. TIME WHEN PRICE ATTACHES.
3. COMPLETED RAILROAD—MEANING.
4. LANDS VARYING IN DISTANCE—WHAT CONTROLS.
5. PROTEST AND DELAY—EFFECT ON PRICE.
6. APPRAISING AND REAPPRAISING—PRACTICE.

1. DISTANCE FROM RAILROAD—MINIMUM PRICE.

Congress did not by this section establish a fixed price at which coal lands should be sold, but prescribed merely that "not less than" the price named should be required therefor, depending upon the distance of the lands from a completed railroad.

Plested, In re, 40 L. D. 610, p. 612.

The payment of not less than \$10 or \$20 per acre, according to location with reference to a railroad, is a condition precedent to the right to enter public coal land.

Brown Bear Coal Ass'n, In re, 42 L. D. 320, p. 323.

Coal lands entered as such must be paid for at the rate of \$20 per acre if they lie within 15 miles of a completed railroad, though an inaccessible range of mountains lies between the lands and such railroads.

Foster, In re, 2 L. D. 730, p. 733.

Conant, In re, 29 L. D. 637.

Mortson, In re, 16 C. L. O. 52.

A qualified person may enter vacant coal lands by legal subdivision not exceeding 160 acres at a price of not less than \$10 or \$20 per acre, depending upon its distance from a completed railroad.

Smith v. Buckley, 15 L. D. 321, p. 322.

2. TIME WHEN PRICE ATTACHES.

The price of coal land under this section depends upon its distance from a completed railroad at the date of entry, irrespective of the preference right of entry given by succeeding sections, and if at the date of proof and payment, which constitute the entry, the land is more than 15 miles from a railroad the price is not less than \$10 per acre, and if within 15 miles the price is not less than \$20 per acre.

Circular, In re, 1 L. D. 687, p. 689.

Coal Lands, In re, *Copp's Min. Lands* 345, p. 346.

See *Burgess*, In re, 24 L. D. 11.

The price of coal lands depends upon their proximity to a completed railroad at the date of payment entered irrespective of the preference right of entry.

Foster, In re, 2 L. D. 730.

MacLean, In re, (unreported, May 10, 1882).

The price of coal land, as fixed by this section, is not affected by the act of July 28, 1882 (22 Stat. 178), and the general rule that the price depends upon the circumstances at the date of entry must be followed with regard to lands within the 10-mile strip as well as in other cases.

Foster, In re, 2 L. D. 730.

This section only provides what the price of the coal lands shall be at the date of the entry and payment irrespective of the preference right of entry.

Largent, In re, 13 L. D. 397, p. 399.

The price of coal lands within 15 miles of a completed railroad at the date of the application for purchase is \$20 per acre.

Colton, In re, 10 L. D. 422.

Where coal lands are situated more than 15 miles from any railroad at the time claimant commences opening and improving the mine and the date that he files his declaratory statement, then the purchase price is \$10 per acre, but if it is within 15 miles of a road at the date of his application to purchase, then the price is \$20 per acre.

Coal Lands, In re, 1 L. D. 540, p. 542.

Where at the date of proof and payment coal land is less than 15 miles from a completed railroad the price shall not be less than \$20 per acre, and this is determined by the distance of the land from a completed railroad at such date irrespective of the preference right of entry acquired by a prior opening, improving and actual possession of the claim, and filing a declaratory statement therefor within the prescribed time.

Colton, In re, 10 L. D. 422, p. 423.

See *Watson v. Missouri River, etc.*, R. Co., 3 C. L. O. 7.

The status of coal land at the date of proof and payment, with respect to its distance from a completed railroad, determines the price irrespective of its status when the preference right of entry was acquired.

Colton, In re, 10 L. D. 422.

Brown Bear Coal Ass'n, In re, 42 L. D. 320, p. 322.

See *Rosser*, In re, 42 L. D. 571.

3. COMPLETED RAILROAD—MEANING.

The term "completed railroad" means one which is actually constructed.

Circular, In re, 1 L. D. 687, p. 689.

The distance of coal lands from a completed railroad, as governing the price, makes no exception on the ground that such completed railroad is not accessible.

Foster, In re, 2 L. D. 730.

4. LANDS VARYING IN DISTANCE—WHAT CONTROLS.

Where lands lie partly within 15 miles of a completed railroad and in part outside of such limit the maximum price must be paid for all legal subdivisions the greater part of which lie within the 15-mile limit.

Circular, In re, 1 L. D. 687, p. 689.

5. PROTEST AND DELAY—EFFECT ON PRICE.

Where an applicant for coal land has filed a proper application for purchase, has complied with the regulations as to the publication of notice, and has paid the price of the land according to conditions existent at that time as to distance from a completed railroad, he is not to be prejudiced by the failure of the land officers to allow formal entry, and can not be charged an additional price due to the subsequent location of a railroad nearer the land.

Brown Bear Coal Ass'n, In re, 42 L. D. 320, p. 323.

Overruling Largent, In re, 13 L. D. 397, and

Burgess, In re, 24 L. D. 11.

See Roesser, In re, 42 L. D. 571.

6. APPRAISING AND REAPPRAISING—PRACTICE.

The practice of appraising and reappraising coal deposits in the public lands as a basis for their disposition under the coal act, has been in vogue since 1907, and the duty of ascertaining the valuation of the coal lands has been committed in part at least to the Geological Survey.

McCornick, In re, 41 L. D. 661, p. 664.

H. PATENT.

1. NATURE AND TITLE.
2. PATENT FOR LANDS RESERVED—VALIDITY.
3. VACATING VOID PATENT—DEFENSE.
4. SUIT TO CANCEL.
5. DEPARTMENT DECISIONS FINAL—AUTHORITY OF LOCAL OFFICERS.

1. NATURE AND TITLE.

The rule that a patent is the only complete legal title under the land laws applies to coal lands.

Hawley v. Diller, 178 U. S. 476, p. 487.

2. PATENT FOR LANDS RESERVED—VALIDITY.

A patent issued for land reserved from sale by law is void for want of authority.

Mullan v. United States, 118 U. S. 271, p. 279.

3. VACATING VOID PATENT—DEFENSE.

A person holding a voidable patent to coal lands can not protect himself against a prosecution by the Government by forming a corporation in which he is the dominant factor and conveying to it the premises which he has acquired in violation of law

United States v. Allen, 180 Fed. 855, p. 862.

4. SUIT TO CANCEL.

The United States may maintain a suit in equity in its own name and behalf to set aside and cancel a patent to a tract of land on the ground that it was known coal land within the meaning of this section and of which fact the applicant had knowledge at the time of his application.

McLaughlin v. United States, 107 U. S. 526.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 170.

Western Pac. R. Co. v. United States, 108 U. S. 510, p. 513.

Mullan v. United States, 118 U. S. 271, p. 278.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 135.

Where the Government sues to annul a patent fraudulently obtained under the coal land act, a tender of the purchase price is unnecessary.

Alaskan Coal Lands, In re, 28 Op. Atty. Gen. 448, p. 453.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

5. DEPARTMENT DECISIONS FINAL—AUTHORITY OF LOCAL OFFICERS.

The finding of the Land Department in a proceeding to set aside an entry of coal land and in the issuance of a patent to the adverse claimant is conclusive on all questions of fact.

Durango Land & Coal Co. v. Evans, 80 Fed. 425, p. 429.

Where the findings of the Land Department in relation to an entry of coal lands and the issuance of a patent therefor are sought to be set aside on the ground that the department erred in the decision of a mixed question of law and fact, the facts as laid before and found by the department must be shown with particularity so that the court may determine whether the law has been misconstrued.

Durango Land & Coal Co. v. Evans, 80 Fed. 425, p. 429.

The local land officers in the matter of entry and sale of coal lands are under the control of, and their acts are subject to review by, the Commissioner of the General Land Office and ultimately subject to the review of the Secretary of the Interior, and they are not to be called upon to put a court in possession of their views and defend their instructions from the commissioner and convert a contest by the Land Department into one before a court.

Plested v. Abbey, 228 U. S. 42, p. 51.

SECTION 2348, REVISED STATUTES.

Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: Provided, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than \$5,000 in working and improving any such mine or mines, such association may enter not exceeding 640 acres, including such mining improvements.

A. COAL ENTRY.

B. PREFERENCE RIGHT, p. 754.

C. IMPROVEMENTS, p. 761.

D. DECLARATORY STATEMENT, p. 762.

A. COAL ENTRY.

1. CONDITIONS PRECEDENT.
2. MINERAL CHARACTER OF LAND—PROOF.
3. QUALIFICATIONS OF ENTRYMAN—PROOF.
4. SINGLE ENTRY ONLY PERMITTED.
5. SECOND FILING PERMITTED—EXCUSE.
6. QUANTITY OF LAND.
7. UNLAWFUL ENTRIES—CANCELLATION—RIGHT TO REPAYMENT.

1. CONDITIONS PRECEDENT.

The preference right of entry of coal lands under this section is based upon the performance of certain conditions precedent.

McConnell, In re, 18 L. D. 414, p. 416.

The application, notice, proof of notice, and payment are in every case the necessary prerequisites to an actual present right to enter coal land; and a qualified association seeking 640 acres has also the burden of making \$5,000 expenditure as a further prerequisite to enter that quantity of land.

Carthage Fuel Co., In re, 41 L. D. 21, p. 27.

The persons named in this section may enter coal land upon the terms and conditions named in the preceding section, which fixes the price of the land.

Coal Lands, In re, 1 L. D. 540.

The literal definition of the word "preemption" as the right of one to purchase before another may be broad enough to include coal entries under this section, but is not used in that sense in the act of March 3, 1891 (26 Stat. 1098).

United States v. Yankee Fuel Co., 195 Fed. 850, p. 852.

2. MINERAL CHARACTER OF LAND—PROOF.

Discovery and improvement of coal mines seem to be the chief purpose of the laws in reference to coal lands.

Swain v. Kearney, 22 L. D. 306, p. 307.

One of the prerequisites to a coal entry is that the land to be entered must contain coal, but in improving and developing a coal mine it is not always profitable or necessary to place the improvements on land that necessarily contains coal, and cases might arise where it might be impracticable to do so and hence the character of the land on which the improvements may be made for the purpose of working, developing, and operating a mine or mines under this act is wholly immaterial.

McWilliams v. Green River Coal Ass'n., 23 L. D. 127, p. 129.

The right to purchase coal lands is initiated by the actual discovery of coal on the land and the performance of some act of improvement sufficient to give notice to the public of an intent to purchase the lands.

Reed v. Nelson, 29 L. D. 615, p. 618.

It is not essential to the validity of an application to purchase coal lands that the association applicants should have opened and improved a mine of coal on the several tracts of land applied for, but it is sufficient that the proof show the lands to be of the class and character subject to disposal under the coal-land laws.

Lehmer v. Carroll, 34 L. D. 267, p. 269.

Lehmer v. Carroll, 34 L. D. 447.

Proof of ascertaining coal deposits of such extent and value as to make the land more valuable to be worked as a coal mine under existing conditions than for merely agricultural purposes establishes its mineral character.

Scott v. Sheldon, 15 L. D. 588, p. 589.

See Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

3. QUALIFICATIONS OF ENTRYMAN—PROOF.

Where an association of qualified persons make application for a purchase of coal lands it is sufficient to prove that the persons are qualified and that they have expended not less than \$5,000 in working and improving a mine or mines of coal on the land described, and this is a question between the Government and the applicants and not between the applicants and a third person.

Lehmer v. Carroll, 34 L. D. 267, p. 269.

Lehmer v. Carroll, 34 L. D. 447.

An agreement by a coal-land applicant to pay out of the proceeds of the sale of the land after patent the amount advanced by another and to pay such other person an aliquot part of the same received does not disqualify the applicant from receiving the benefits of the coal-land laws.

Jemison, In re, 42 L. D. 420, p. 422.

See United States v. Colorado Anthracite Co., 225 U. S. 219.

4. SINGLE ENTRY ONLY PERMITTED.

One person can have the benefit of one entry or filing only, and such person is disqualified by having made an entry or filing alone or as a member of an association.

Negus, In re, 11 L. D. 32, p. 35.

A person who has made one filing for 40 acres of coal land may include in his entry an adjoining 40 acres purchased by him where without such additional 40 acres his original claim was practically worthless, and where he acted in good faith and has

prosecuted the work of development and spent considerable money in driving a long tunnel into the coal land in preparing for mining, and has paid the Government price for the land.

Ackert, In re, 17 L. D. 268, p. 270.

While the law limits each individual to one entry and prohibits the holding of any other lands by a person who has in any manner participated in the one entry, yet it does not require that the tract or tracts entered shall be in compact form, the only restriction being as to quantity and that it shall be bounded by legal lines of subdivision.

Union Pacific R. Co., In re, Copp's Min. Lands 338.

Wyoming Coal & Min. Co., In re, Copp's Min. Lands 338, p. 339.

Hutchings, In re, 4 C. L. O. 142.

Prior to the act of March 3, 1873 (17 Stat. 607), there was no limitation on the number of entries one person could make, but by this act confined every qualified entryman to one entry, and every association of persons, not less than four, and under certain conditions, to 160 acres.

United States v. Munday, 222 U. S. 175, p. 181.

5. SECOND FILING PERMITTED—EXCUSE.

A second declaratory statement can not be filed in the absence of a valid reason for abandoning the first, and one who has had the benefit of a coal declaratory statement is disqualified to make a second filing.

Eisemann Case, In re, 10 L. D. 539.

Negus, In re, 11 L. D. 32.

Dearden, In re, 11 L. D. 351.

Conner v. Terry, 15 L. D. 310.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 231.

6. QUANTITY OF LAND.

This section permits an entry of coal land not exceeding 640 acres by an association of not less than four qualified persons, upon condition particularly described.

Dally, In re, 41 L. D. 295, p. 301.

7. UNLAWFUL ENTRIES—CANCELLATION—RIGHT TO REPAYMENT.

The showing that coal entries were made in the names of four entrymen, each taking the particular tract to which he claimed a preference right of purchase, and after the entries were made each conveyed to a single person in consideration of the purchase price paid to them beforehand and which was the amount necessary to be paid to the Government, such grantee or transferee has no right of repayment if the land is not in fact valuable for coal.

Allen, In re, 8 L. D. 140, p. 143.

See Walsh, In re, 5 L. D. 319.

B. PREFERENCE RIGHT.

1. MEANING.
2. PREREQUISITES—MEANING OF "MINE."
3. POSSESSION BY APPLICANT.
4. POSSESSION BY AGENT—RIGHT OF PRINCIPAL.
5. GOOD FAITH OF APPLICANT.
6. PREFERENCE RIGHT AND ACTUAL ENTRY—DISTINCTION.
7. CONTINUANCE.

8. OPENING AND IMPROVING COAL MINE.

- a. CONSTRUCTION OF PROVISIO.
- b. FIRST RIGHT TO PURCHASER.
- c. CONDITION PRECEDENT TO ENTER.
- d. LABOR AND IMPROVEMENTS—GOOD FAITH.
- e. LABOR AND IMPROVEMENTS SUFFICIENT.
- f. LABOR AND IMPROVEMENTS INSUFFICIENT.

9. SALE AND TRANSFER.**10. DEVELOPMENT OF LAND—OWNERSHIP OF COAL.****1. MEANING.**

The provisions that the persons named shall be entitled to a preferential right of entry under the preceding section means that they may enter the land upon the terms and conditions named in the preceding section, which fixes the price of the land.

Coal Lands, In re, 1 L. D. 540, p. 541.

This section gives a mere preference right by taking the steps enumerated therein for the acquisition of coal lands.

United States v. Forrester, 211 U. S. 399, p. 403.

The preference right granted by this section has reference to a subsequent entry, and the price is to be determined at the date of the entry as if the entryman made private cash entry, and notwithstanding he may have secured a preference right.

Coal Lands, In re, 1 L. D. 540, p. 542.

This right of preference is not in and of itself the equivalent of an entry uncontrolled by the prohibition which the statute expresses, but is merely a preference given to make the statutory entry of a particular tract of coal land in preference to others.

United States v. Forrester, 211 U. S. 399, p. 403.

The term preference, as used in this section in reference to a right of entry, means exclusive, and the right thus secured is to the exclusion of all other purposes and the duration and extent of such a right is strictly governed by the statute.

Morrison, In re, 36 L. D. 126, p. 128.

The preference right referred to in this section has reference to a subsequent entry, but the price has to be determined at the date of the entry and is regulated by the relation of the land to the railroad at the date of proof of payment.

Coal Lands, In re, 1 L. D. 540.

The preference which this section allows is but a right within the time limited to make the entry authorized by the preceding section, and it can not be held that the obtaining of such mere right of preference authorizes the making not only of an entry which the statute permits, but also one which the statute forbids.

United States v. Forrester, 211 U. S. 399, p. 403.

A person or association duly qualified may become invested with a substantial claim or right under the coal-land laws, but this is something short of a right to make present entry.

Carthage Fuel Co., In re, 41 L. D. 21, p. 27.

2. PREREQUISITES—MEANING OF "MINE."

Aside from the matter of qualification three elements must concur to give rise to this preference right: (a) The opening of a mine of coal; (b) its improvement as such, and (c) actual possession thereof.

Morrison, In re, 36 L. D. 126, p. 128.

The preference right is exclusive, and then for the period after that it depends upon the filing of the declaratory statement.

Marston, In re, 36 L. D. 319, p. 327.

A preference right of entry accrues only where a competent person or association have opened and improved a coal mine upon the public lands and are in actual possession thereof; but the mere filing of a declaratory statement alone is not sufficient.

Carthage Fuel Co., In re, 41 L. D. 21, p. 28.

The term "mine," when applied to coal, is generally equivalent to a worked vein.

Sewfield, In re *Cunningham Cairns*, 41 L. D. 176, p. 230.

See *Westmoreland Coal Co.*, In re, 85 Pa. 344.

3. POSSESSION BY APPLICANT.

This section gives the preference right of purchase based on priority of possession and improvements.

Townsite of Coalville, In re, 4 C. L. O. 46, p. 47.

The actual possession contemplated by this section must be bona fide and must be the possession of the applicant himself to entitle him to a preference right of entry as against a prior private cash entry under the preceding section.

McDaniel v. Bell, 9 L. D. 15, p. 17.

A person in possession and making improvements on coal lands has the preference right of entry over persons subsequently making cash entries for the same land.

Negos, In re, 11 L. D. 32, p. 34.

This section gives a preference right of entry, and the right arises where any person or persons, severally qualified to enter, have opened and improved a coal mine or mines upon the public lands and are in actual possession of the same, and the right accrues only to the person or persons who had opened and improved the mine or mines and are in possession of the same.

McKibben v. Gable, 34 L. D. 178, p. 180.

Stevens, In re, 37 L. D. 723, p. 725.

As between two or more claimants for land, all claiming it as coal land, priority of possession and improvements will govern the award when the law has been fully complied with by each party.

Paire v. Markham, 21 L. D. 197, p. 198.

4. POSSESSION BY AGENT—RIGHT OF PRINCIPAL.

Where an agent for a coal-land entryman is in possession of coal land for the purpose of perfecting the title for his principal, all acts done by such agent for such purpose will inure to the benefit of the principal.

Rose v. Dinneen, 26 L. D. 107, p. 111.

5. GOOD FAITH OF APPLICANT.

The good faith of a coal claimant is shown from the fact that he commences to take out coal a few days after his first offer to file his declaratory statement and continues to take out coal in considerable quantities and develop the mine as best he could where the improvements are worth from \$800 to \$900, as against a person subsequently taking possession and where there is some doubt as to whether the improvements by the latter were made for the purpose of development of the mine or for his own benefit, or for the benefit of another, and in such case the priority of possession will entitle the claimant to the preference right of purchase.

Bullard v. Flannagan, 11 L. D. 515, p. 517.

A person who discovers an outcropping vein of coal on the public lands and files a declaratory statement of his intention to purchase the land under the coal-land law may proceed to explore and develop such outcropping vein where the exposed part is not sufficient to make the land of practical value for coal mining, and in an action of trespass by the United States to recover the value of the coal mined and sold may show that all that was done by him was done in good faith, with the sole purpose of ascertaining whether or not the land was valuable for coal and with intent, if it was, to purchase the same under the coal-land law during the life of his declaratory statement; and that he believed that what he was doing was within the law and the regulations of the Land Department, and that he ceased operations and permitted his declaratory statement to expire without purchasing the land because it did not ultimately prove to be valuable for coal; and in support of his good faith he may show that in the same vicinity there were some developed coal mines which influenced him to undertake and continue the development work, and that all he did was reasonably necessary to the proper ascertainment of the character of the land, and that the total amount received for the coal mined and sold was in fact less than the sum paid for mining and hauling the same to the place of sale.

Ghost v. United States, 168 Fed. 841, p. 842.

As between rival claimants for coal land, each having complied with the law, the quantity of coal cuts but little figure, or the amount of the expenditures made, where it is shown that such applicants have acted in good faith.

Paire v. Markham, 21 L. D. 197, p. 198.

6. PREFERENCE RIGHT AND ACTUAL ENTRY—DISTINCTION.

The preference right given by this section to enter coal land and the actual entry thereof are distinct in their legal significance and effect, and the right to enter a tract upon payment of a certain price confines the entry to that price and does not permit the entry to be controlled by conditions affecting the price, which may have existed when the preference right was secured and when the relation of the land to the completed railroad may have been quite different.

Coal Lands, In re, 1 L. D. 540, p. 541.

7. CONTINUANCE.

This preference right once secured may be continued for one year beyond its duration by the filing of a declaratory statement within 60 days after the date of actual possession and the commencement of improvements on the land, as provided in section 2349 R. S.

Morrison, In re, 36 L. D. 126, p. 128.

8. OPENING AND IMPROVING COAL MINE.

a. CONSTRUCTION OF PROVISIO.

The subject matter of the proviso to this section is germane to the text of section 2347, rather than to this section.

Carthage Fuel Co., In re, 41 L. D. 21, p. 26.

The legal rights of an association of persons to enter 640 acres of coal land must be found in the proviso to this section and in section 2347, and these must be construed together.

Carthage Fuel Co., In re, 41 L. D. 21, p. 27.

McWilliams v. Green River Coal Ass'n., 23 L. D. 127, p. 129.

The effect of the proviso of this section is to give to the qualified association, on making the \$5,000 expenditure, the right to purchase 640 acres of coal land.

Carthage Fuel Co., In re, 41 L. D. 21, p. 26.

3. RIGHT OF ENTRY TO MINES.

A. The plaintiff's right of preference of working under the second mine in preference to the first mine was not lost by the opening and improvement of the first mine in preference to the second.

Walker v Taylor, 23 L. D. 110.

A. Plaintiff's right of preference was not lost by the opening and improvement of the first mine upon public lands and a second mine upon private land, if the second mine was opened and improved before the first.

Walker v Taylor, 23 L. D. 110.

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Walker v Taylor, 23 L. D. 110.

Walker v Taylor, 23 L. D. 110.

Walker v Taylor, 23 L. D. 110.

Walker v Taylor, 23 L. D. 110.

The right arising from the opening and improving of a coal mine is a condition precedent to the preference right of entry, and this right is exclusive as to all other persons.

Walker v Taylor, 23 L. D. 110.

The section gives to plaintiff persons who have opened and improved, or who shall so do, the first mine and improve any coal mine on the public lands and shall have the actual possession thereof, a preference right of entry under the prior section.

Walker v Taylor, 23 L. D. 110.

The preference right and preference granted under the general statute for settlement on the public lands applies to one who opens and improves a coal mine upon the public lands under these conditions.

Walker v Taylor, 23 L. D. 110.

C. CONDITION PRECEDENT TO ENTRY.

The law does not make the opening and improvement of a coal mine upon public lands a condition precedent to the preference right of entry.

Walker v Taylor, 23 L. D. 110, p. 111.

The preference right given by this section is not created or initiated by the filing of a declaratory statement under section 2349, but it is acquired only by opening, improving, and having possession of a mine or mines of value on the public lands, and in absence of either of these required conditions no preference right of entry accrues under this section.

McKibben v Gable, 34 L. D. 178, p. 180.

Lahmer v Carroll, 34 L. D. 447, p. 451.

Atkinson, In re, 37 L. D. 723, p. 725.

There is no authority under which a coal mine upon public lands in the absence of an entry may be worked and operated for profit, or beyond the opening and improving of the mine as a condition precedent to a preference right under this section.

Miller, In re, 36 L. D. 360, p. 361.

A preliminary compliance with the law in respect to the opening and improving of a coal mine will not suffice, but a mine or mines of coal must be in fact opened and improved on the lands claimed.

McClucki, In re (Cunningham Claims), 41 L. D. 176, p. 229.

d. LABOR AND IMPROVEMENTS—GOOD FAITH.

The opening and improving of a coal mine in order to confer a preference right of purchase can not be considered as a mere matter of form, but the labor expended and improvements made must be such as to clearly indicate the good faith of the claimant, and the applicant for such preference right must be in actual possession of the land at the time he seeks to exercise the right.

Circular, In re, 1 L. D. 687, p. 690.

Negus, In re, 11 L. D. 32, p. 35.

Walker v. Taylor, 23 L. D. 110, p. 111.

The law only requires, in opening and improving a coal mine, that the labor expended and the improvements made must be such as to indicate the good faith of the claimant and not a mere matter of form.

Paire v. Markham, 21 L. D. 197, p. 198.

The \$5,000 expenditure referred to in the proviso of this section is a condition precedent to the right to enter, and not the acquirement of a preference right of a 640-acre tract.

Anderson Coal Co., In re, 41 L. D. 337, p. 344.

Carthage Fuel Co., In re, 41 L. D. 21, p. 26.

A coal-land claimant must show that he has expended in labor and improvements the amount required and that the land was properly within the meaning of this act.

Smith v. Buckley, 15 L. D. 321.

Substantial steps taken in good faith looking to the creation of an operating and producing coal mine are essential, but what special work or workings constitute the opening of a mine or what accomplishes the improvement of a mine when opened are matters as to which no arbitrary rule can be stated, but each case must be determined upon the facts disclosed.

Filer, In re, 36 L. D. 360, p. 362.

Coal land reappraised after the opening and improving of a mine and the filing of a declaratory statement, but prior to the required expenditure, may upon seasonably making such expenditures be purchased at the price existent at the date of the opening and improving of the coal mine, and this price is the minimum fixed by statute.

Carthage Fuel Co., In re, 41 L. D. 21.

Brown Bear Coal Ass'n, In re, 42 L. D. 320, p. 322.

e. LABOR AND IMPROVEMENTS SUFFICIENT.

This section intends to set a premium upon the opening up of such lands for the potential production of coal, and the opening and improving of a coal mine must be such as to demonstrate the presence of coal, the existence of which must be proved in some appropriate manner, whether an application to purchase and enter be in the exercise of a preference right or otherwise.

Stevens, In re, 37 L. D. 723, p. 725.

A person in possession of coal lands on which he has opened a coal mine drove an entry and a slope at considerable expense, and who furnishes information which leads to the cancellation of a fraudulent entry, and who acts in good faith, and has done all that he is permitted by the Land Office to do, is entitled to the preference right of entry accorded a successful contestant.

Garner v. Mulvane, 12 L. D. 336, pp. 337, 342.

f. LABOR AND IMPROVEMENTS INSUFFICIENT.

The mere cleaning out of old coal prospects at an expense of not exceeding \$10 is not sufficient to answer the requirements of this section.

Filer, In re, 36 L. D. 360, p. 362.

The mere penetration of a bed of coal by means of a drill so small that the work can not be utilized in the mining of coal from the land is not in itself the opening and improving of a mine or mines thereon within the contemplation of this section and does not give the locator a preferential right to be preserved by his declaratory statement.

Stevens, In re, 37 L. D. 723, p. 725.

Tunnels driven not with the intent of developing and operating mines, but for the purpose of ascertaining whether a group of claims contain coal in workable quantities and of merchantable qualities, do not constitute the opening and improving of a coal mine within the meaning of this section.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 231.

See *Ghost v. United States*, 168 Fed. 841.

Mere open cuts or tunnels, constructed in the nature of prospecting for coal and to determine the extent of a field as whether or not the coal was of commercial quality, can not be regarded as the opening and improving of a mine within the meaning of this section.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 230.

9. SALE AND TRANSFER.

There is no prohibition in the statute providing for coal entries against the transfer of the preference right of entry.

McConnell, In re, 18 L. D. 414, p. 415.

The preference right of entry under this section is a valuable property right and independent of statutory prohibition may be assigned.

McConnell, In re, 18 L. D. 414, p. 415.

Where the rights of an applicant for coal land are fixed and vested the inherent right of alienation attaches, but if such rights are in suspension and contingent then a purchaser will take nothing by the purchase except by relation back in the event of perfection of the entry, and the transaction in the absence of fraud will not annihilate all rights adverse to the Government.

Durango Land, etc., Co., In re, 18 L. D. 382, p. 385.

An agreement by which a coal-land applicant agreed with another that upon receipt of a patent the land should be sold as soon as possible and from the proceeds of the sale to pay the money advanced by such persons to pay the purchase price and fees in connection with the entry and patent, and in addition one-third of the balance remaining, together with interest on the amount so advanced, is not in violation of statute or of the coal-land regulations and is not enforceable against the land, but is only a promise to pay the amount in case of a sale.

Jemison, In re, 42 L. D. 420, p. 421.

Assignments of the right to purchase coal lands will be recognized when properly executed, but proof and payment must be made within the prescribed period, which dates from the first day of possession of the assignor, but this does not authorize an assignment to be made to a person who has exhausted the right of purchase under this act.

McGillicuddy v. Tompkins, 14 L. D. 633, p. 636.

10. DEVELOPMENT OF LAND—OWNERSHIP OF COAL.

In view of the purpose and spirit of this statute, a qualified individual or association who enters upon the public lands in search of coal deposits and expends time, labor, and money in an honest effort to open and develop such deposits and when found intending in good faith to purchase the lands according to the statute, if the coal proves to be such as to give character and value to the land, becomes the owner of such coal as is mined and removed as an incident only to the reasonable prosecution of such work.

Ghost v. United States, 168 Fed. 841, p. 848.

C. IMPROVEMENTS.

1. CONDITION PRECEDENT—VALUE OF IMPROVEMENTS.
2. IMPROVEMENTS ON LEGAL SUBDIVISIONS—EFFECT.
3. RELINQUISHMENT—EFFECT.

1. CONDITION PRECEDENT—VALUE OF IMPROVEMENTS.

When an association of not less than four qualified persons has opened and improved a coal mine upon the public lands, and shall have expended not less than \$5,000 in working and improving such mine, such association may enter the tract, including such mining improvements, not exceeding 640 acres.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 165.

This section requires, as a condition precedent to the right to file a declaration for coal lands, that improvements have been made thereon and that at least \$5,000 has been expended, before 640 acres can be entered, and that the qualifications of the person or association of persons must be shown.

Johnson v. South Dakota, 17 L. D. 411.

Carthage Fuel Co., In re, 41 L. D. 21, p. 25.

The proviso permitting an association to enter not exceeding 640 acres, including mining improvements, means that where an association has expended \$5,000 or more in working and improving a coal mine, then it may enter by legal subdivisions not to exceed 640 acres, including the legal subdivisions of the land on which the mining improvements are actually situated, irrespective of whether such subdivision is coal or agricultural land.

McWilliams v. Green River Coal Ass'n., 23 L. D. 127, p. 129.

An individual person who has expended the required amount for 160 acres, or an association of persons which has expended \$5,000 or over, in working and improving a coal mine on the public lands may, in the absence of any superior claim enter not exceeding 640 acres under the coal-land laws, including such mining improvements, without making any declaratory statement.

Lehmer v. Carroll, 34 L. D. 447, p. 451.

Improvements on coal lands which consist mainly in slashing some of the timber will not satisfy the demands of the statute.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 486.

2. IMPROVEMENTS ON LEGAL SUBDIVISIONS—EFFECT.

As entries under the coal-land law are required to be made by legal subdivisions it seems reasonable and proper that the land covered by the improvement should be limited to the subdivisions on which the improvements are actually situated.

McWilliams v. Green River Coal Ass'n., 23 L. D. 127, p. 130.

3. RELINQUISHMENT—EFFECT.

Upon the filing of a relinquishment of the work done by the original entryman on coal lands the improvements made inure to the benefit of an adverse claimant whose claim is valid.

Quimette v. O'Connor, 22 L. D. 538, p. 541.

Quimette v. O'Connor (on review), 23 L. D. 243.

Where a coal filing has been relinquished, the original applicant can not make a second filing.

Smith, In re, 16 C. L. O. 112.

See *Dearden, In re*, 16 C. L. O. 112, distinguishing *McMillan, In re*, 7 L. D. 181.

D. DECLARATORY STATEMENT.

1. PURPOSE AND EFFECT.
2. CONTENTS—FORM AND SUFFICIENCY.
3. OATH OF CLAIMANT—COMPETENCY OF NOTARY PUBLIC.
4. TIME OF FILING.
5. FAILURE TO FILE—EFFECT.
6. CLAIMANT MUST MAKE IN PERSON.
7. BURDEN OF PROOF.

1. PURPOSE AND EFFECT.

The object and purpose of the declaratory statement are to give notice of and to publish for the period specified in section 2350 a preference right of entry already acquired and the office of such declaratory statement is to preserve the right and not to create it.

Lehmer v. Carroll, 34 L. D. 447, p. 451.

McKibben v. Gable, 34 L. D. 178.

The declaratory statement is useful and has a purpose to serve only where time is desired within which to make payment for the lands, as to which a preference right of entry exists, and to complete the entry proceedings, and in such case the declaratory statement gives notice of right and operates to preserve it for the period specified in section 2350, but it has no other function, and where there is no such purpose to serve no declaratory statement is required.

Lehmer v. Carroll, 34 L. D. 447, p. 451.

Carthage Fuel Co., In re, 41 L. D. 21, p. 25.

A coal declaratory statement can not of itself initiate any right to coal land, but merely preserves and continues a preference right of entry, already acquired, for an additional period of twelve months.

Richardson v. Wilson, 41 L. D. 275, p. 277.

Carthage Fuel Co., In re, 41 L. D. 21.

Woodhouse, In re, 41 L. D. 145, p. 146.

A coal declaratory statement is a filing required to be made by a person who, having acquired a preference right to make entry of a tract of public coal land, by opening and improving a mine of coal thereon, seeks to preserve such right beyond a period of 60 days following the date upon which such right accrues.

Richardson v. Wilson, 41 L. D. 275, p. 277.

The filing of the declaratory statement as provided in this section is the same whether the application to enter be by an individual person for 160 acres, or by an association of persons for 320 acres, or by an association of not less than four persons for 640 acres

who had expended \$5,000 or more in working and improving a coal mine upon the lands.

Carthage Fuel Co., In re, 41 L. D. 21, p. 25.
See Holladay Coal Co. v. Kirker, 20 Utah 192.

The declaratory statement, as provided for in this section, is not necessary where no preference right of entry exists.

Carthage Fuel Co., In re, 41 L. D. 21, p. 25.

Upon a timely presentation of an application by a declarant to purchase coal lands, the effect of the filing of the declaratory statement ceases, except as it may be invoked against a withdrawal of the lands or rights claimed by an adverse claimant, during the preference right period, otherwise it becomes *functus officio*.

Richardson v. Wilson, 41 L. D. 275, p. 277.

2. CONTENTS—FORM AND SUFFICIENCY.

The declaratory statement as to a coal entry must show that the entryman has located and opened a valuable mine of coal on the land.

Sterling, In re, 15 C. L. O. 256.

The declaratory statement is required to be made under oath and to show that the claimant has located and opened a valuable mine of coal on the land, and that he has expended in labor and improvements on such mine a specific sum of money and giving a description of such labor and the improvement.

Allen, In re, 8 L. D. 140, p. 141.

The regulations under this section require the claimant to show that he is in the actual possession of the mine and makes the entry for his own use and benefit, and not directly or indirectly for the use and benefit of another.

Allen, In re, 8 L. D. 140, p. 142.

3. OATH OF CLAIMANT—COMPETENCY OF NOTARY PUBLIC.

Under sections 2348 and 2349 R. S., a notary public is not authorized and is not competent to administer an oath in support of a claim as a preemptor of coal lands.

United States v. Manion, 44 Fed. 800.

An indictment for perjury can not be predicated upon an affidavit made before a notary public by a person in support of his claim to a preemption right to purchase coal land under this statute.

United States v. Manion, 44 Fed. 800, p. 801.

4. TIME OF FILING.

The Land Department is without authority to waive the statutory requirement as to when the declaratory statement must be filed, and if filed after the statutory period it is without effect.

Morrison, In re, 36 L. D. 126, p. 130.

Unless the declaratory statement is filed within the statutory period the preference right lapses and such declaratory statement gives no right whatever; but the statute contemplates a total period of substantially 14 months for the existence of this preference right, and this includes an absolute right for the first 60 days and the right for the remaining one year period upon the condition of filing a declaratory statement.

Scotfield, In re (Cunningham Claims), 41 L. D. 176, p. 233.

There is no provision to the effect that an association of four or more persons asserting a claim for 640 acres shall present its declaratory statement within 60 days after

the completion of the expenditure of not less than \$5,000 in working and improving a mine, but actual possession concurring with the opening and the improving of a mine is the condition precedent to the declarant's rights and priority therein, followed by reasonable filing of the proper notice and continued good faith, and these determine the preference right to purchase.

Carthage Fuel Co., In re, 41 L. D. 21, p. 26.

5. FAILURE TO FILE—EFFECT.

The failure to file the declaratory statement and to make the required payment renders coal lands subject to relocation.

Brennan v. Hume, 10 L. D. 160, p. 162.

Where a person files a coal declaratory statement, a sale of the land before final proof defeats his right to a subsequent entry and purchase of the land.

Union Coal Co., In re, 17 L. D. 351.

6. CLAIMANT MUST MAKE IN PERSON.

The regulations adopted under this section require a declaratory statement and affidavit to be made by the applicant himself, but such claimant may, after making his application or declaratory statement and affidavit empower an agent to do certain acts and certain proofs may be made by an agent.

Hallowell, In re, 2 L. D. 735.

7. BURDEN OF PROOF.

The burden of proof is on an applicant to establish the fact that at the date of the hearing there was no bona fide claim under any law of the United States or any mining claim.

Smith v. Buckley, 15 L. D. 321, p. 322.

SECTION 2349, REVISED STATUTES.

All claims under the preceding section must be presented to the register of the proper land district within 60 days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within 60 days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the 3d day of March, 1873, 60 days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the 3d day of March, 1873.

A. CONSTRUCTION AND APPLICATION OF SECTION.

B. PREFERENCE RIGHT.

C. RIGHT TO POSSESSION, p. 766.

D. DECLARATORY STATEMENT, p. 766.

E. NOTICE—FAILURE TO GIVE—EFFECT, p. 770.

A. CONSTRUCTION AND APPLICATION OF SECTION.

This section provides the method of procedure for the presentation of claims under the preceding section.

McConnell, In re, 18 L. D. 414, p. 416.

Under the coal-land laws the terms "location," "claim," "purchase," and "entry," have acquired well and defined meanings.

McKibben v. Gable, 34 L. D. 178.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412, p. 417.

This section refers to the claims held under the preceding section, and such claims must be presented within 60 days after the date of actual possession and the commencement of improvements.

Carthage Fuel Co., In re, 41 L. D. 21, p. 26.

B. PREFERENCE RIGHT.

1. NATURE.

2. CONTINUANCE BY FILING DECLARATORY STATEMENT.

1. NATURE.

The preference right granted by this section is a mere right of entry secured to the entryman as against others, and it affects no other question and has no relation to the price of the land, but refers to the entry only, and if waived by neglect to prove up and pay for the land it ceases.

Coal Lands, In re, 1 L. D. 540, p. 541.

The failure of a preference-right claimant to file or purchase within the time limited will not forfeit his right to purchase and enter thereafter except in favor of some other qualified applicant.

Morrison, In re, 36 L. D. 319, p. 322.

The office of the declaratory statement provided for by this section is to preserve the preference right of entry given by the preceding section, but not to create it, and if the right does not exist the declaratory statement has no office to perform and is without force or effect for any purpose.

McKibben v. Gable, 34 L. D. 178, p. 180.

2. CONTINUANCE BY FILING DECLARATORY STATEMENT.

Where a preference right of entry, as provided in section 2348, is once acquired the right may be preserved and continued by filing a declaratory statement under this section until the expiration of the time within which proof and payment may be made under section 2350.

McKibben v. Gable, 34 L. D. 178, p. 180.

The continuation of the preference right given by the preceding section beyond the 60-day period depends upon the filing of the declaratory statement in accord with this section, otherwise such preference right lapses and is at an end, and the sufficiency of the declaratory statement provided in this section is to preserve such preference right and not to create it, and if such right does not exist the declaratory statement is without force or effect.

Morrison, In re, 36 L. D. 126, p. 128.

Morrison, In re, 36 L. D. 319.

See McKibben v. Gable, 34 L. D. 178, p. 181.

C. RIGHT TO POSSESSION.

Under the coal-land law, a claimant seeking a preference right to purchase and coming lawfully into the possession of public coal land is entitled, upon continued compliance with such laws in good faith, to hold and possess the same, as against any other party claiming under the same law, for a period of 1 year and 60 days after the date of actual possession and commencement of improvements.

Skoyen v. Harris, 24 L. D. 46, p. 48.

D. DECLARATORY STATEMENT.

1. DUTY TO MAKE—PLACE OF FILING.
2. OFFICE AND PURPOSE.
3. FILING IN PERSON—OATH OF APPLICANT.
4. FORM AND SUBSTANCE.
5. TIME OF FILING.
 - a. DATE FROM POSSESSION.
 - b. SIXTY-DAY PERIOD—COMMENCEMENT.
 - c. FILING AFTER TOWNSHIP PLAT IS FILED.
 - d. TIME IN ALASKA.
6. TIME FOR MAKING PROOF AND PAYMENT.
7. WHEN FILING IS UNNECESSARY.
8. PROOF AFTER FILING.
9. GROUNDS FOR REJECTING.
10. SINGLE FILING ONLY PERMITTED—EXCEPTIONS.

1. DUTY TO MAKE—PLACE OF FILING.

Under this section all claims must be presented at the proper land office within 60 days after the date of actual settlement and improvement by filing a declaratory statement therefor.

O'Gorman v. Mayfield, 19 L. D. 522, p. 523.

Neither a coal entry nor the filing of a declaratory statement is authorized upon unsurveyed lands.

Lyon, In re, 20 L. D. 556.

The right to purchase coal lands can not be initiated by the filing of a declaratory statement.

Reed v. Nelson, 29 L. D. 615, p. 619.

2. OFFICE AND PURPOSE.

The office of the declaratory statement is to protect and preserve the preference right previously acquired for the definite term fixed by the statute, and its absence opens the land to other appropriation or disposition after the 60-day period.

McKibben v Gable, 34 L. D. 178.

Morrison, In re, 36 L. D. 319, p. 321.

The office of a declaratory statement is not to create but to preserve a preference right of entry theretofore acquired by the opening and improvement of a mine or mines of coal, and if the right does not exist the declaratory statement has no office to perform and is without force or effect.

Stevens, In re, 37 L. D. 723, p. 726.

Conway v. Brooks, 39 L. D. 337, p. 339.

3. FILING IN PERSON—OATH OF APPLICANT.

A coal-land declaratory statement filed by one person in the interests of another must be rejected.

Conner v. Terry, 15 L. D. 310, p. 312.

The affidavit to the application and declaratory statement must be made by the applicant in person, as swearing to such statement by proxy finds no support in law.

Conner v. Terry, 15 L. D. 310, p. 312.

4. FORM AND SUBSTANCE.

The department regulations under these coal sections provide that a claimant must state in his declaratory statement that he has located and opened a valuable mine of coal on the land and has expended in labor and improvements a certain stated sum, with a particular description of such labor and improvements; but neither this nor the following section require that a claimant must have opened a mine on the land at the time of presenting his claim and that a declaratory statement without such showing is sufficient.

Ouimette v. O'Connor, 22 L. D. 538, p. 541.

A coal entry may be permitted on a defective declaratory statement.

Anthracite Mesa Coal Co., In re, 19 L. D. 18, p. 19.

5. TIME OF FILING.

a. DATE FROM POSSESSION.

Under this section a declaratory statement or notice of preference right must be filed in the proper land office within 60 days after the date of actual possession and commencement of improvements.

Ghost v. United States, 168 Fed. 841, p. 844.

Brennan v. Hume, 10 L. D. 160, p. 162.

Paire v. Markham, 21 L. D. 197, p. 198.

Coal-land claimants who were actually in possession of the lands during their suspension from sale must file their declaratory statements within 60 days from its termination as required by this section.

Foster, In re, 2 L. D. 730, p. 734.

A person who has opened and improved a coal mine on the public domain in order to secure a preference right must file his papers within 60 days after the date of actual possession and the commencement of the improvements on land, except in case where the township plat is not filed in the district office.

Ackert, In re, 17 L. D. 268, p. 269.

A coal-land claimant who appears at the receiver's office on the last day of the life of his claim and during business hours, is within time, though he is prevented from submitting his final proof and making payment because of the receiver's office being closed.

Skoyen v. Harris, 24 L. D. 46, p. 49.

No right is gained by filing a declaratory statement before coal is discovered and developed on the land.

Reed v. Nelson, 29 L. D. 615, p. 620.

Coal-land filings and entries can be allowed only after the land has been surveyed.

Rider, In re, 42 L. D. 505.

b. SIXTY-DAY PERIOD—COMMENCEMENT.

The claimant must, when the township plat is on file, make and file his declaratory statement for the tract claimed 60 days from and after the first day of his actual possession and improvements; and 60 days, exclusive of the first day of such possession, must be allowed.

Circular, In re, 1 L. D. 687, p. 691.

The 60-day period for the filing of declaratory statement does not mean 60 days from the date on which the locator enters into possession of the tract and commences the prosecution of the work, but refers to the origin and existence of the preference right provided for in the preceding section.

Morrison, In re, 36 L. D. 126, p. 129.

From the date a mine is opened upon the coal and improvements thereon commenced and possession is taken the period of 60 days within which a declaratory statement may be filed begins to run, and within that time the preference right acquired by the preceding sections may be exercised, or it may be preserved and continued by filing the declaratory statement provided for by this section.

Morrison, In re, 36 L. D. 126, p. 129.

A delay in the presentation of the declaratory statement can not operate to enlarge the right beyond that fixed by the statute and which can be enjoyed only by filing within the time limited.

Morrison, In re, 36 L. D. 319, p. 322.

c. FILING AFTER TOWNSHIP PLAT IS FILED.

Claims for a preference right of entry must be presented within 60 days after the date of actual possession and the commencement of actual improvements if the township plat is on file, otherwise the filing must be made within 60 days from the receipt of such plat.

Broad v. Ray, 20 L. D. 422, p. 423.

Lyon, In re, 20 L. D. 556.

Town Site of Coalville, In re, 4 C. L. O. 46, p. 47.

Where the absence of the township plat prevents earlier filing, the period for filing is extended 60 days from the receipt of such plat and the period for purchase is extended 1 year longer, or 1 year and 60 days from the filing of the plat.

Rose v. Dinneen, 26 L. D. 107, p. 110.

d. TIME IN ALASKA.

See 31 Stat. 658, p. 782; 33 Stat. 525, p. 783.

Coal claimants in Alaska, under the act of April 28, 1904 (33 Stat. 525), are given one year from making their locations within which to file notices of their claims, and such notices are required to be filed in the proper recording district and with the register and receiver of the local land office.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412, p. 413.

6. TIME FOR MAKING PROOF AND PAYMENT.

The law does not require that the purchase of coal land shall be made within one year from the filing of the declaratory statement, but the regulations give one year from and after the expiration of the period allowed for filing the declaratory statement in which to make proof and payment.

Rose v. Dinneen, 26 L. D. 107, p. 109.

The time of filing of a segregation plat may be taken as the point from which to compute the time within which a purchase of the coal lands must be made, and an application to purchase made 1 year and 60 days from the filing of a segregation plat is in time.

Rose v. Dinneen, 26 L. D. 107, p. 110.

7. WHEN FILING IS UNNECESSARY.

Where the privilege of postponing entry in the manner provided for by this and the following section, after a preference right of entry has been acquired, is not desired by a claimant, then the filing of a declaratory statement before application or entry is not necessary and is not required; and in such case, even where a claimant fails to make application to enter and pay for the lands within 60 days, neither his failure in this respect, nor his failure to file his declaratory statement, would operate to forfeit his right to purchase and enter the land except in favor of some other qualified application.

Lehmer v. Carroll, 34 L. D. 447, p. 451.

8. PROOF AFTER FILING.

On filing the declaratory statement required by this section the entryman of coal lands must prove his right and pay for the land within one year of the time prescribed for filing his claim, in default of which his preference right expires.

Coal Lands, In re, 1 L. D. 540, p. 541.

9. GROUNDS FOR REJECTING.

An entry for coal lands will not be permitted where the lands contain no outcroppings or other surface indications of coal and where none was discovered in a shaft sunk by the applicant and a declaratory statement previously made is void.

McGillicuddy v. Tompkins, 14 L. D. 633, p. 634.

The offer to file coal declaratory statements should be rejected where at such time the tract is covered by a valid homestead entry.

Bullard v. Flannagan, 11 L. D. 515, p. 517.

A declaratory statement may be rejected where the Land Department is satisfied that it is filed in the interest of others.

Durango Land, etc., Co., In re, 18 L. D. 382, p. 384.

See Conner v. Terry, 15 L. D. 310.

10. SINGLE FILING ONLY PERMITTED—EXCEPTIONS.

While the statute does not expressly limit a party to one filing of a declaratory statement, it also does not expressly give him the right to more than one, but provides that on the prescribed condition he shall be entitled to a preference right of entry and the departmental regulations limiting a party to one filing is not in conflict with any express provision of the statute and the regulation is needful for carrying into effect the provisions of the law.

Eisemann, In re, 10 L. D. 539, p. 540.

Dearden, In re, 11 L. D. 351, p. 352.

A construction which will admit a second filing as to mineral claims would allow an indefinite number successively for the same or different tracts and a party might continue to file for the same tract of land until he had exhausted the coal therein.

Eisemann, In re, 10 L. D. 539, p. 540.

The prohibition against more than one coal entry does not relate strictly to the filing of a declaratory statement, but a second statement may be filed on giving valid reasons for failure to prove title under the first.

McMillan, In re, 7 L. D. 181, p. 182.

Eisemann, In re, 10 L. D. 539, p. 540.

Dearden, In re, 11 L. D. 351, p. 352.

E. NOTICE—FAILURE TO GIVE—EFFECT.

The failure to file the notice required by this section, or to pay for the land within the required period, renders the land subject to entry by any other qualified applicant, and in either event the preference right acquired under the preceding section is lost.

Morrison, In re, 36 L. D. 126, p. 129.

The notice required of the filing of the approved plat of a survey of a township, or when an amendment thereto adds to the area of public lands included therein, is not necessary on the filing of a segregation plat.

Rose v. Dianeen, 26 L. D. 107, p. 110.

SECTION 2350, REVISED STATUTES.

The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section 2348 shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

A. COAL-LAND ENTRY.

B. DECLARATORY STATEMENT—PURPOSE, p. 778.

A. COAL-LAND ENTRY.

1. CONSTRUCTION AND APPLICATION OF SECTION.
2. EXTENT OF PROHIBITION.
3. SINGLE ENTRY ONLY PERMITTED.
4. SECOND FILING PERMITTED—EXCUSE.
5. ENTRIES IN ALASKA—SURVEYED LANDS.
6. ENTRY BY AGENT PROHIBITED.
7. CORPORATION CAN NOT ENTER BY OFFICERS OR DUMMIES.
8. CONSPIRACY TO ENTER.
9. DISQUALIFIED PERSONS.
10. DISQUALIFIED ASSOCIATIONS.
11. DISQUALIFIED CORPORATIONS.
12. ASSIGNMENT OF INTEREST BY ENTRYMAN—EFFECT AND RIGHTS.
13. TIME FOR MAKING PROOF AND PAYMENT.
14. FAILURE TO MAKE PROOF AND PAY WITHIN TIME—EFFECT.
15. FAILURE TO COMPLETE ENTRY—EFFECT OF ADVERSE CLAIM.
16. TIME FOR MAKING PROOF IN ALASKA.

1. CONSTRUCTION AND APPLICATION OF SECTION.

This section can not be construed to permit the doing by indirection of that which the statute expressly declares shall not be done.

United States v. Keitel, 211 U. S. 370, p. 388.

The construction of this statute in a civil case may be applied in a criminal case subsequently arising.

United States v. Keitel, 211 U. S. 370, p. 392.

The right to sell coal lands lawfully acquired neither directly nor indirectly implies the authority to unlawfully acquire such coal lands in violation of an express statute.

United States v. Keitel, 211 U. S. 370, p. 389.
See United States v. Munday, 222 U. S. 175.

2. EXTENT OF PROHIBITION.

It is definitely settled that the prohibitions contained in this section apply to all entries for coal lands whether or not there has been a prior location and possession by an entryman under the preceding sections.

United States v. Allen, 180 Fed. 855, p. 860.

The prohibition can not be read out of the statute and thereby cause it to be inoperative by permitting a disqualified person to enter by an agent coal lands which he himself is prohibited from doing.

United States v. Keitel, 211 U. S. 370, p. 388.

The absence of a limitation on the power to sell coal lands after properly acquiring them affords no ground for saying that the express prohibition of the statute against more than one entry by the same person should not be enforced according to its plain meaning.

United States v. Keitel, 211 U. S. 370, p. 389.
United States v. Munday, 222 U. S. 175.

The construction of this statute as to its limitations on the right of entry is not based upon the question of public policy alone, but upon the express prohibition to the effect that one person is permitted to make but one entry.

United States v. Keitel, 211 U. S. 370, p. 392.
United States v. Munday, 222 U. S. 175.

The limitation in this section prohibiting any other person from making more than one coal-land entry is part of the amendments of the coal mining laws making them applicable to Alaska.

United States v. Doughten, 186 Fed. 226, p. 232..

3. SINGLE ENTRY ONLY PERMITTED.

This section permits only one entry by the same person or association of persons, and an entry will not be permitted which is in contravention of this provision.

Peterson, In re, 6 L. D. 371, p. 372.
McGillicuddy v. Tompkins, 14 L. D. 633.
Durango Land, etc., Co., In re, 18 L. D. 382, p. 384.
Burrell, In re, 29 L. D. 323, p. 330.
Hutchings, In re, 4 C. L. O. 142.
Northern Pac. Coal Co., In re, 7 L. D. 422.

Only one entry by the same person or association of persons can be made, and no association of persons, any member of which shall have taken the benefit of the preceding section, either as an individual or as a member of any other association, shall enter or hold any other location.

Kerr v. Utah-Wyoming Imp. Co., 2 L. D. 727, p. 729.

This section permits but one entry by one person or association of persons, and such entry when made under section 2347 is limited to 160 acres by one individual person or 320 acres by an association of persons severally qualified.

Peterson, In re, 6 L. D. 371, p. 373.

This section expressly limits the rights of individual coal entrymen and the rights of an association of persons, any member of which shall have taken the benefit of the preceding sections, either as an individual or as a member of any other association.

Dally, In re, 41 L. D. 295, p. 301.
Stough, In re, 41 L. D. 616, p. 620.

This section prohibits two filings, and only one declaratory statement can be filed for coal lands.

McKean v. Buell, Copp's Min. Lands 343, p. 345.

This section prohibits more than one entry of coal land either by an individual or an association of persons, and requires preferred claimants to file their declaratory statements, prove their respective rights, and pay for their claims within the period prescribed by section 2349.

McKean v. Buell, Copp's Min. Lands 343, p. 344.

A combination or scheme by means of which each member would have a legal right to compel his fellow members to hold each and every tract for the benefit of all and to have an accounting of all profits derived from the mining operations on each several tract, although the legal title be retained by the individual members in severalty, thus enabling the combination to acquire coal lands in excess of 320 acres, is a violation of the provision of this section authorizing one entry only by the same person or association of persons.

United States v. Portland Coal, etc., Co., 173 Fed. 566.

Coal lands in Alaska, In re, 27 Op. Atty. Gen. 412.

See United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

United States v. Keitel, 211 U. S. 370.

The express command of this section limiting the preceding sections to authorize only one entry by the same person or association of persons, thereby prohibits more than one entry by the same person, and as the right to purchase coal lands did not exist except as conferred by this statute, it follows that the express provision excluding the right to do a particular act, is, in form and substance, a prohibition against the doing of such act.

United States v. Keitel, 211 U. S. 370, p. 388.

See United States v. Munday, 222 U. S. 175.

4. SECOND FILING PERMITTED—EXCUSE.

A second filing may be made upon a showing of good faith and the expenditure of a large sum in developing and improving the land and in the absence of any adverse claim.

McMillan, In re, 7 L. D. 181.

Burrell, In re, 29 L. D. 328, p. 330.

A second coal declaratory statement can not be filed in the absence of a valid reason for failure to prove title under the first filing.

Eisemann, In re, 10 L. D. 539.

Dearden, In re, 11 L. D. 351.

Conner v. Terry, 15 L. D. 310, p. 311.

Burrell, In re, 29 L. D. 328, p. 330.

The statute does not expressly prohibit a second filing of a coal-land declaratory statement, but does provide that only one entry shall be authorized by the same person or association of persons.

Eisemann, In re, 10 L. D. 539.

The regulation under this section prohibiting a second filing was made for the purpose of preventing the extensive mining and sale of coal under a mere filing without paying for the land, and benefits accruing under the first filing to a party would be within the evil intended to be remedied by the regulation, and a second filing would not be permitted, but the rule will not be applied where no such evil exists and where the good faith of the entryman is apparent and a sufficient excuse is shown.

Burrell, In re, 29 L. D. 328, p. 330.

5. ENTRIES IN ALASKA—SURVEYED LANDS.

By this act the rule was adopted of confining every qualified person to one entry of coal lands, and every association of persons not less than four in number, and under certain conditions, to the entry of not exceeding 640 acres, and the policy of this restriction was to prevent a monopolization of such coal lands by securing to every citizen the right to obtain for himself one tract not exceeding 160 acres of such coal land, and Congress did not depart from this policy by the act of 1904 as to the unsurveyed lands of Alaska.

United States v. Munday, 222 U. S. 175.

United States v. Doughten, 186 Fed. 226, p. 231.

This section does not permit an entry of coal lands which have not been surveyed, and while the act of 1900 extended the provisions of the general mining law to Alaska, it was for a time inoperative, because the coal lands could not be entered by legal subdivisions, as the coal lands in Alaska had not been surveyed, and the act of 1904 was intended to make all coal mining laws applicable to the unsurveyed coal lands of Alaska, but it did not destroy or annul the previous statutes limiting the right of entry to one location, but made that rule apply to unsurveyed coal lands of Alaska, as well as to the surveyed lands on other parts of the public domain.

United States v. Munday, 222 U. S. 175.

Overruling United States v. Munday, 186 Fed. 375, p. 383.

See United States v. Doughten, 186 Fed. 226, p. 232.

6. ENTRY BY AGENT PROHIBITED.

The public purpose of preventing a monopoly of the coal lands would be frustrated by allowing a person to make one entry in his own name and thereafter as many as he chooses through his agent and for his exclusive benefit.

United States v. Keitel, 211 U. S. 370, p. 389.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

United States v. Munday, 222 U. S. 175, p. 182.

The prohibition of this section excludes the existence in a disqualified person of a power to employ an agent to make a second entry, and to furnish him with the money to pay therefor, under a promise that he will transfer his entry to such disqualified person.

United States v. Keitel, 211 U. S. 370, p. 388.

An act done for a disqualified person by an agent acting for him and for his exclusive benefit is in effect the act of such disqualified principal and is prohibited by this section.

United States v. Keitel, 211 U. S. 370, p. 388.

United States v. Forrester, 211 U. S. 399, p. 402.

7. CORPORATION CAN NOT ENTER BY OFFICERS OR DUMMIES.

A corporation can not procure its officers, stockholders, and employees to make individual entries of coal land for the benefit of the corporation, and where it pays all the expenses of such entries, as it can not be permitted to do indirectly that which it is prohibited from doing directly.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 167.

United States v. Keitel, 211 U. S. 370, p. 392.

See United States v. Robbins, 157 Fed. 999, p. 1000.

Entries made by officers, stockholders, and employees of a private corporation in their individual names, but for the benefit of the corporation, of vacant coal lands are fraudulent and in violation of this section of the statute.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 166.

A corporation that has made one coal location in Alaska is disqualified from making any other or additional location, and being thus disqualified it can not make a second location through another person acting for its use and benefit, and the coal-land laws, as applied to Alaska, prevents any qualified person from making a coal-land location or entry apparently for himself, but in fact as an agent for a corporation, and for the purpose of enabling such corporation to hold a larger area of coal lands than it could lawfully locate for itself.

United States v. Munday, 222 U. S. 175.

See United States v. Doughnten, 186 Fed. 226, p. 230.

Where a valid entry of coal lands has been made by a corporation, the disqualification of a stockholder in the company while the land is so held can not affect the validity of the company's claim.

Kerr v. Utah-Wyoming Imp. Co., 10 C. L. O., 207, p. 208.

8. CONSPIRACY TO ENTER.

Where a number of persons enter into an agreement to obtain title to a large tract of coal lands from the United States, and to vest such title in a company organized by them for such purpose, and to procure third persons to make individual entries of coal lands secured by false testimony, the parties to the agreement furnishing the money, and on the issuance of the final receipts they caused the deed to be made directly to the company so organized, paying the entrymen small sums of money, constitutes a conspiracy to defraud the United States out of its coal lands.

United States v. Lonabaugh, 158 Fed. 314, p. 319.

See United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

A conspiracy to procure various persons as agents to enter public coal lands in behalf of the conspirators, ostensibly for the benefit of the persons making the entry, but in reality for the use and benefit of the conspirators, is a conspiracy to defraud the Government within the meaning of the statute prohibiting a conspiracy to defraud the United States in any manner or for any purpose.

United States v. Keitel, 211 U. S. 370, p. 393.

See United States v. Trinidad Coal, etc., Co., 137 U. S. 160.

United States v. Robbins, 157 Fed. 999, p. 1000.

An applicant for a coal entry violates the spirit as well as the letter of the law where he shows that he himself furnished the money for the payment of a large number of entries for his own use.

Allen, In re, 8 L. D. 140, p. 142.

9. DISQUALIFIED PERSONS.

Under this section and rule 9 of the regulations of July 1, 1882, one person can have the benefit of one entry or filing only, and he is disqualified by having made such entry or filing alone or as a member of an association.

Conner v. Terry, 15 L. D. 310, p. 311.

This section permits one entry only by a person or association of persons, and therefore does not permit an application to purchase coal lands in the interest of another who has already exhausted his right under the statute.

McGillicuddy v. Tompkins, 14 L. D. 633, p. 636.

See Northern Pac. Coal Co., In re, 7 L. D. 422.

In an effort to prevent monopoly the Congress prescribed the area that could be included in a single purchase by one person or by an association of persons, and declared that one who either by himself or as a member of an association made one purchase was thereafter disqualified to acquire coal lands from the Government.

Scotfield, In re (Cunningham Claims), 41 L. D. 176, p. 222.

A person who is a member of an association that has taken coal land can not afterwards take a tract as an individual.

Ackert, In re, 17 L. D. 268, p. 269.

A person is not disqualified under this section who owns any quantity of other land, nor by having removed from his own land in the same State or Territory.

Circular, In re, 1 L. D. 687, p. 689.

This section does not contain the sole disqualification of persons making coal entries, but section 2347 places limitations upon the area which may be acquired and prohibits individuals as well as association of individuals from acquiring a limited area of coal lands through entries made by others.

Dally, In re, 41 L. D. 295, p. 304.

Stough, In re, 41 L. D. 616, p. 620.

10. DISQUALIFIED ASSOCIATIONS.

This section authorizes an association of persons to enter not exceeding 320 acres, but it provides that only one entry can be made by the same person or association, and that "no association or persons, any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof."

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 166.

An association can not evade this statute by using for its own benefit the names of its members and employees to obtain from the Government vacant coal lands which it could not regularly obtain upon entries made in its own name, and which it was forbidden to enter by reason of some of its members having previously taken the benefit of the statute.

United States v. Trinidad Coal, etc., Co., 137 U. S. 160, p. 168.

This section expressly limits the right of entry by a person or association of persons, and expressly provides that no association of persons, any member of which shall have taken the benefit of this statute, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions of the statute.

United States v. Keitel, 211 U. S. 370, p. 387.

United States v. Lonabaugh, 158 Fed. 314, p. 317.

11. DISQUALIFIED CORPORATIONS.

An association or corporation of persons are permitted to make one entry only, but if any member of such association or corporation is disqualified the entry is invalid.

Kerr v. Utah-Wyoming Imp. Co., 2 L. D. 727.

See Kerr v. Utah-Wyoming Imp. Co., 10 C. L. O. 207.

Persons who have made coal locations and who are members of a company making other locations do not disqualify the latter where they dispose of their individual locations prior to the date of the entry by such company.

Kerr v. Utah-Wyoming Imp. Co., 2 L. D. 727, p. 729.

A corporation is not disqualified from obtaining patent for coal lands where it is not shown that any of the stockholders at the date of the entry were disqualified.

Kerr v. Utah-Wyoming Imp. Co., 10 C. L. O. 207, p. 208.

The entymen of coal lands can not be held to be agents or tools of a corporation not in existence at the time the entries are made within the meaning of this section.

Ireland v. Henkle, 179 Fed. 993, p. 994.

12. ASSIGNMENT OF INTEREST BY ENTRYMAN—EFFECT AND RIGHTS.

A patent for coal lands can not be issued to an applicant or entryman who has sold and assigned his entire interest in the land.

Kerr v. Carleton, 9 C. L. O. 193.

Kerr v. Utah-Wyoming Imp. Co., 10 C. L. O. 207.

A person who files a coal declaratory statement and then sells the land acquires no vested right, as whatever rights he had were contingent upon his compliance with the statute in the matter of expending money in working and improving the mine and in paying for the land, and having parted with all his interest in the land he could not make proof upon which an entry could properly be made.

Union Coal Co., In re, 17 L. D. 351, p. 352.

13. TIME FOR MAKING PROOF AND PAYMENT.

Under the regulations adopted a claimant has one year from and after the expiration of the period allowed for filing the declaratory statement within which to make proof and payment.

Ghost v. United States, 168 Fed. 841, p. 845.

Brennan v. Hume, 10 L. D. 160, p. 162.

Ackert, In re, 17 L. D. 268, p. 269.

Broad v. Ray, 20 L. D. 422, p. 423.

This section provides that all persons claiming coal lands under section 2347 shall prove their respective rights and pay for the land filed upon within one year from the time prescribed for filing claims, and a failure to do so renders the land subject to entry by other applicants.

McKibben v. Gable, 34 L. D. 178, p. 180.

A filing on coal lands does not expire until 12 months after date and a party without making proof and payment may hold the land covered by such filing for such period in addition to that within which he is required to file.

Eisemann, In re, 10 L. D. 539, p. 540.

The right which may be thus relied upon can not be carried beyond the period for which it would be inviolate when filed in strict accord with the terms of the statute; that is, one year after the expiration of the 60-day period and in one year from the subsequent date on which the declaratory statement has been filed.

Morrison, In re, 36 L. D. 319, p. 322.

In computing the time in which the claimant should submit proof and make entry the first day should be eliminated.

O'Gorman v. Mayfield, 19 L. D. 522, p. 523.

14. FAILURE TO MAKE PROOF AND PAY WITHIN TIME—EFFECT.

Under the regulations relating to this section a party who otherwise complies with the law may enter after the expiration of the year, if no adverse rights have intervened, as he simply postpones his entry beyond the year at his own risk, and if other persons locate the land the value of the improvements can have no weight in his favor.

Brennan v. Hume, 10 L. D. 160, p. 162.

See *Grunsfeld*, In re, 10 L. D. 508, p. 509.

Parties who have made coal filings and have failed to make entry of the tracts therein described within the time prescribed by law may make entry thereof if no adverse rights have intervened.

Hutchings, In re, 4 C. L. O. 142.

An appeal by a coal declarant will not be sustained where it has the effect to extend the time within which such declarant would be required to prove his rights and pay for the lands beyond the time prescribed by the statute.

Smith, In re, 16 C. L. O. 112.

Where a declaratory statement is not filed within the prescribed time the land is subject to entry by any other qualified applicant.

Townsite of Coalville, In re, 4 C. L. O. 46, p. 47.

15. FAILURE TO COMPLETE ENTRY—EFFECT OF ADVERSE CLAIM.

The failure to prove a coal-land entry within this statutory period will defeat the right of purchase where there is an existing adverse claim.

O'Gorman v. Mayfield, 19 L. D. 522, p. 523.

A claimant for coal lands must assert his possessory claim in good faith and for his own use and benefit to entitle him to a hearing as against an adverse claimant.

Broad v. Ray, 20 L. D. 422, p. 425.

16. TIME FOR MAKING PROOF IN ALASKA.

Under this section coal claimants are required to make their applications for patent, submit proofs, and pay for the land within one year from the date of the filing of their declaratory statements, but such claimants in Alaska are allowed three years in which to complete the purchase.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412, p. 413.

B. DECLARATORY STATEMENT—PURPOSE.

The filing of the declaratory statement, as provided for in section 2348, R. S., protects the preference right of entry and preserves it for the period specified in this section.

Carthage Fuel Co., In re, 41 L. D. 21, p. 25.

Lehmer v. Carroll, 34 L. D. 447, p. 451.

SECTION 2351, REVISED STATUTES.

In case of conflicting claims upon coal lands where the improvements shall be commenced, after the 3d day of March, 1873, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the 3d day of March, 1873, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

A. CONFLICTING CLAIMS.

B. COAL-LAND ENTRY.

C. RULES AND REGULATIONS, p. 781.

A. CONFLICTING CLAIMS.

1. PRIORITY OF POSSESSION--RIGHTS.
2. POSSESSION AND IMPROVEMENTS.

1. PRIORITY OF POSSESSION—RIGHTS.

In case of conflicting claims to public coal lands priority of possession and improvement, followed by proper filing and continuous good faith, determines the right to purchase.

Ghost v. United States, 168 Fed. 841, p. 845.
Walker v. Taylor, 23 L. D. 110, p. 111.

2. POSSESSION AND IMPROVEMENTS.

A mere possession without satisfactory improvements will not secure the tract to the first occupant when a subsequent claimant shows his full compliance with the law.
Circular, In re, 1 L. D. 687, p. 690.

In case of conflicting claims priority of possession and improvement, followed by proper filing and continued good faith, determines the rights of the respective claimants.

Filer, In re, 36 L. D. 360, p. 361.

Where there are no adverse claims the land should be sold to the parties who, by substantial improvements, actual possession, and a reasonable industry, show an intention to continue the development of the mine in preference to persons who seek to purchase for speculative purposes only, and such proof of compliance with the laws may be required as the circumstances in each case may justify.

Circular, 1 L. D. 687, p. 690.

B. COAL-LAND ENTRY.

1. SINGLE ENTRY PERMITTED—QUANTITY OF LAND.
2. APPLICANT'S SHOWING UNDER OATH.
3. ASSIGNMENT BY ENTRYMAN—RIGHT OF PURCHASER.
4. VERIFICATION MUST BE BY CLAIMANT—SUFFICIENCY.
5. APPLICANT'S COMPLIANCE WITH LAW—PROOF.

1. SINGLE ENTRY PERMITTED—QUANTITY OF LAND.

The Land Department can dispose of the Government coal lands only in accordance with the law, and the statute provides that only one entry can be made by one person or association of persons and limits the amount which a single individual or association of persons may enter.

Northern Pac. Coal Co., In re, 7 L. D. 422.
See Peterson, In re, 6 L. D. 371.

Under the regulations authorized by this section one person can have the benefit of one entry or filing only, and he is disqualified by having made such entry or filing alone, or as a member of an association.

Eisemann, In re, 10 L. D. 539.
Ackert, In re, 17 L. D. 268, p. 269.
McConnell, In re, 18 L. D. 414, p. 415.

2. APPLICANT'S SHOWING UNDER OATH.

Under the regulations authorized by this section an applicant must declare under oath that he has never held or purchased any coal lands under any statute relating to the sale of such lands, and that he has never had the right of purchase, and has never held any other lands thereunder.

Eisemann, In re, 10 L. D. 539.

3. ASSIGNMENT BY ENTRYMAN—RIGHT OF PURCHASER.

Under this section regulations providing that assignments of the right to purchase coal lands will be recognized when properly executed are valid, but they refer to the inchoate right acquired by virtue of the fact of settlement and improvement and of filing the declaratory statement.

Durango Land, etc., Co., In re, 18 L. D. 382, p. 384.
Union Coal Co., In re, 17 L. D. 351.

A person who purchases from another the possessory right to a developed coal mine in a condition to be worked and operated, and continues in actual possession, is entitled to file his declaratory statement and prove the title, though the title is still in the United States.

Swain v. Kearney, 22 L. D. 306, p. 306.

4. VERIFICATION MUST BE BY CLAIMANT—SUFFICIENCY.

A claimant, in asserting his preemption right to, and completing his purchase of, coal lands must verify his declarations and applications by his own oath, and can not delegate that duty.

White Oak Imp. Co., In re, 13 C. L. O. 159.

The affidavit required by the regulations authorized by this section must be made by the claimant himself and an oath made by a claimant to his declaratory statement does not contain all the essential averments of the affidavit prescribed by the coal-land regulations, and in no case can the declaratory statement relate to and cover the ensuing interval to the date of entry.

Keen, In re, 34 L. D. 49, p. 51.
See Stafford, In re, 21 L. D. 300.

5. APPLICANT'S COMPLIANCE WITH LAW—PROOF.

The burden of proof is upon a protestant to show that an applicant has failed to comply with the law.

Watkins v. Garner, 13 L. D. 414, p. 415.

C. RULES AND REGULATIONS.

1. COMMISSIONER AUTHORIZED TO MAKE.
2. FORCE AND EFFECT OF REGULATIONS.
3. SALE OF COAL LAND BY PRIVATE ENTRY.
4. PRICE OF LAND.
5. ADDITIONAL EVIDENCE PERMITTED.

1. COMMISSIONER AUTHORIZED TO MAKE.

This section authorizes the Commissioner of the Land Office to issue all needful rules and regulations for carrying into effect the provisions of the law relating to coal-land filings and entry.

Eisemann, In re, 10 L. D. 539.
Dally, In re, 41 L. D. 295, p. 301.

This section specifically authorizes the Commissioner of the General Land Office to issue all needful rules and regulations for carrying the law into effect, and rules and regulations so issued have a legal foundation and their effectiveness is not open to question, and applicants are charged with knowledge of their existence.

McCornick, In re, 41 L. D. 661, p. 663.

An application for a coal-land entry must be in conformity to the regulations made under the authority of this section.

Johnson v. South Dakota, 17 L. D. 411, p. 412.

2. FORCE AND EFFECT OF REGULATIONS.

The regulations authorized under this section have all the force and effect as law of the statute itself.

Rogers v. Lukens, 6 L. D. 111.
Eisemann, In re, 10 L. D. 539.
McConnell, In re, 18 L. D. 414, p. 415.

The rules and regulations of the Commissioner of the General Land Office under this section can not have the force of a United States statute relating to perjury.

United States v. Manion, 44 Fed. 800, p. 801.

3. SALE OF COAL LAND BY PRIVATE ENTRY.

This section authorizes the adoption of rules and regulations for the sale of coal land by private entry, or by granting a preference right of purchase based on priority of possession and improvement.

Masterson, In re, 7 L. D. 172, p. 174.

4. PRICE OF LAND.

By regulations authorized by this section the Land Department is authorized to name a higher price for coal lands than that named in section 2347, if the conditions warrant the same.

Plested, In re, 40 L. D. 610, p. 612.

5. ADDITIONAL EVIDENCE PERMITTED.

Under the regulations additional evidence in ex parte cases may be permitted to avoid further delay and the matter referred to the board of equitable adjudication for action.

Anthracite Mesa Coal Co., In re, 19 L. D. 18, p. 19.

SECTION 2352, REVISED STATUTES.

Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the 3d day of March, 1873, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

A. LANDS VALUABLE FOR PRECIOUS METALS EXCLUDED FROM COAL ENTRY.

Lands that are sufficiently valuable for gold, silver, or copper can not be entered as coal lands to prevent their entry as agricultural lands.

Circular, In re, 1 L. D. 687, p. 689.

This section expressly excludes from sale under the preceding section any lands valuable for mining of gold, silver, or copper.

McKibben v. Gable, 34 L. D. 178, p. 180.

Sections 1, 2, 3, 4, 5, and 6 of the act of March 3, 1873 (17 Stat. 607), are the same as sections 2347 to 2352 R. S., inclusive. See these sections for additional annotations.

AMENDMENTS TO COAL SECTIONS.

31 STAT. 658, JUNE 6, 1900.

COAL-LAND LAWS EXTENDED—AMENDMENT 1.

AN ACT To extend the coal-land laws to the District of Alaska.

Be it enacted, etc., That so much of the public-land laws of the United States are hereby extended to the District of Alaska as relate to coal lands, namely, sections 2347 to 2352, inclusive, of the Revised Statutes.

A. COAL-LAND LAWS.

1. EXTENDED TO ALASKA.
2. CONSTRUED AS SYSTEM.

1. EXTENDED TO ALASKA.

This act extends the provisions of sections 2347 to 2352 of the Revised Statutes to Alaska.

United States v. Doughten, 186 Fed. 226, p. 228.
Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412.

2. CONSTRUED AS SYSTEM.

This act, together with the act of April 28, 1904 (33 Stat. 525), and sections 2347 to 2352 of the Revised Statutes, comprise a system of laws relating to the entry and location of coal lands and must be read and construed together, and are all intended to be operative.

United States v. Munday, 222 U. S. 175.

33 STAT. 525, APRIL 23, 1904.

AMENDMENT 2.

AN ACT To amend an act entitled "An Act to extend the coal-land laws to the District of Alaska."

Be it enacted, etc., That any person or association of persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the District of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing 40, 80, or 160 acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same.

SEC. 2. That such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, made by a United States deputy surveyor or a United States mineral surveyor duly approved by the surveyor general for the District of Alaska, and a payment of the sum of \$10 per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description of the lands, to have been published in a newspaper in the District of Alaska published nearest the location of the premises for a period of 60 days, and shall have caused copies of such notice, together with a certified copy of the official plat or survey, to have been kept posted in a conspicuous place upon the land applied for and in the land office for the district in which the lands are located for a like period, and until after he shall have furnished proof of such publication and posting, and such other proof as is required by the coal-land laws: Provided, That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

SEC. 3. That during such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the District of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the par-

ties, and such patent shall then be issued in conformity with the final decree of such court therein.

SEC. 4. That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the District of Alaska.

A. COAL-LAND LAWS AS A SYSTEM.

B. PURPOSE OF ACT.

C. TEMPORARY NATURE OF ACT.

D. COAL LOCATIONS.

A. COAL-LAND LAWS AS A SYSTEM.

This act, together with the act of June 6, 1900 (31 Stat. 658), and sections 2347-2352 of the Revised Statutes, comprise a system of laws relating to the entry and location of coal lands and must be read and construed together and are all intended to be operative.

United States v. Munday, 222 U. S. 175.

See Scofield, In re (Cunningham Claims), 41 L. D. 176.

B. PURPOSE OF ACT.

The sole purpose of this act was to remedy a defect in the existing laws so as to enable locators to acquire title to coal claims on unsurveyed public lands.

United States v. Doughten, 186 Fed. 226, p. 232.

This act purports to amend the act of June 6, 1900 (31 Stat. 658).

United States v. Doughten, 186 Fed. 226, p. 228.

The purpose of this amendatory act was to provide for coal lands in Alaska, as the act of June 6, 1900 (31 Stat. 658) only provided for such locations on legal subdivisions and therefore did not apply, as the public surveys had not then been extended over Alaska.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412.

C. TEMPORARY NATURE OF ACT.

This act is in a sense temporary in character, for when all of the lands of Alaska shall be surveyed they will come at once under the restrictions of the general law as found in sections 2347-2352 of the Revised Statutes; and the fact alone that the Alaskan coal lands were unsurveyed created the necessity for the act of 1904, but it was not the purpose of Congress to depart from its policy which imposed a restriction upon the number of locations, which had always been limited to one.

United States v. Munday, 222 U. S. 175.

D. COAL LOCATIONS.

1. NOTICE AND RECORD—TIME FOR FILING.
2. TIME FOR MAKING APPLICATION AND SURVEY.
3. PAYMENT OF PRICE—TIME FOR MAKING.
4. CASH ENTRIES—MANNER OF SECURING.
5. SINGLE LOCATION ONLY PERMITTED.
6. ADVERSE CLAIMS.

1. NOTICE AND RECORD—TIME FOR FILING.

Under this act locators were given one year from making their locations within which to file notices of their claims, and such notices were required to be filed in the proper recording district and also with the register and receiver of the proper land office.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412, p. 413.

2. TIME FOR MAKING APPLICATION AND SURVEY.

Under this act coal-land claimants in Alaska are given three years from the date of their notices in which to have their surveys made, apply for patents, make their proofs, and pay for the land.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412, p. 414.

Under this act locators are required to have their claims surveyed in a designated manner, which was not required under the general coal-land laws.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412, p. 413.

3. PAYMENT OF PRICE—TIME FOR MAKING.

The payment provided for in section 2 for coal lands is not required to be paid in advance of all proceedings, and where an adverse claim or protest is filed such payment need not be made until after the adverse claim is disposed of.

Alaskan Coal Lands, In re, 28 Op. Atty. Gen. 448, p. 450.
See United States v. Ballinger, 33 App. Cas. (D. C.) 211.

If this section is construed to mean that the payment provided for shall accompany the application, still the provision is directory and not mandatory, and the payment is not required to be made until it is known that the purchaser's application is entitled to entry and patent, in order that the payment may not be forfeited if the application for any reason should be refused.

Alaskan Coal Lands, In re, 28 Op. Atty. Gen. 448, p. 450.

4. CASH ENTRIES—MANNER OF SECURING.

Cash entries in Alaska could be made only by securing the preferential right provided for by section 2348 R. S. and by opening and improving one or more coal mines on the land sought.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412, p. 413.

Under this act the ordinary cash coal entry provided for by section 2347 R. S. could not be made because the lands had not been surveyed.

Alaskan Coal Lands, In re, 27 Op. Atty. Gen. 412, p. 413.

5. SINGLE LOCATION ONLY PERMITTED.

The fact that a qualified person who makes a lawful location upon coal lands, opens a mine, permanently marks the boundaries, gives the required notices, initiates a claim to such land, and by further compliance with the law earns the right to a patent, and the further fact that the law leaves him free to assign such location, does not impeach the intent of Congress to confine a locator to a single location, as the prohibition is against more than one entry and not against the alienation after a good-faith entry.

United States v. Munday, 222 U. S. 175.

6. ADVERSE CLAIMS.

This section makes provision for the filing of adverse claims and suits being seasonably instituted, and for the suspension of proceedings upon an application to purchase coal lands until the rights of the parties are adjudicated.

Low v. Katalla Co., 40 L. D. 534, p. 537.

II. COAL STATUTES.

- I. COAL LANDS—DISPOSAL.
- II. COAL-MINES INSPECTION, p. 802.
- III. COAL DEPOSITS RESERVED, p. 812.
- IV. AGRICULTURAL ENTRIES ON COAL LANDS, p. 816.
- V. TRANSPORTATION—EXPORTS—TESTING, p. 825.

I. COAL LANDS—DISPOSAL.

13 STAT. 343, JULY 1, 1864.

COAL LANDS—DISPOSAL.

AN ACT To dispose of coal lands and of town property in the public domain.

Be it enacted, etc., That where any tracts embracing coal beds or coal fields, constituting portions of the public domain, and which, as "mines," are excluded from the preemption act of 1841, and which under past legislation are not liable to ordinary private entry, it shall and may be lawful for the President to cause such tracts, in suitable legal subdivisions, to be offered at public sale to the highest bidder, after public notice of not less than three months, at a minimum price of \$20 per acre; and any lands not thus disposed of shall thereafter be liable to private entry at said minimum.

* * * * *

A. CONSTRUCTION AND PURPOSE OF ACT.

1. DISPOSAL OF COAL LANDS—PRICE.
2. POLICY AS TO MINERALS AND SALINES.
3. COAL LANDS ARE MINERAL LANDS.
4. COAL AND AGRICULTURAL LANDS—DISPOSAL.
5. COAL LANDS EXCLUDED FROM PREEMPTION.
6. SETTLERS ON COAL LANDS—PROTECTION.
7. COAL LANDS—PUBLIC AND PRIVATE SALE.
8. COAL LANDS—STATE SELECTIONS.

1. DISPOSAL OF COAL LANDS—PRICE.

See 13 Stat. 529, p. 788; 13 Stat. 567, p. 1273; secs. 2347-2352 R. S., pp. 724-782.

This act and the act of March 3, 1865 (13 Stat. 529), make ample provisions for the sale of coal lands at a price not less than \$20 per acre.

Mullan v. United States, 118 U. S. 271, p. 276.

This act provides that no tracts embracing coal beds or coal fields constituting a portion of the public domain, and which as "mines" are excluded from the preemption act of 1841, and which under existing legislation are not liable to ordinary private entry, may be disposed of at a price not less than \$20 per acre.

Mullan v. United States, 118 U. S. 271, p. 277.

See Alabama, In re, 6 L. D. 493, p. 499.

This act, providing for the sale of tracts embracing coal lands or coal fields, continued in force until the act of March 3, 1873 (R. S. 2347 et seq.).

Alabama, In re, 6 L. D. 493, p. 499.

By this statute Congress gave its own definition of the term "mines" by declaring that any tracts embracing coal beds or coal fields on the public domain, and which as "mines" were excluded from the preemption act, might be purchased hereunder.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 237.

2. POLICY AS TO MINERALS AND SALINES.

This statute supports the theory that the uniform policy of the Government had been to reserve salt lands and salt springs from sale.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 238.

See Salt Bluff Placer, In re, 7 L. D. 549.

Hall v. Litchfield, Copp's Min. Lands, 333.

3. COAL LANDS ARE MINERAL LANDS.

Section 1 of this act is held to be a legislative declaration that "known" coal lands are mineral lands within the meaning of that term as used in the statutes regulating the public lands, unless a contrary intention is manifested.

Mullan v. United States, 118 U. S. 271, p. 277.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 326.

See Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 235.

Regardless as to the effect of this statutory declaration on past transactions it is held that after its enactment coal lands were to be treated as mineral lands.

Mullan v. United States, 118 U. S. 271, p. 277.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 326.

Coal, though a nonmetallic mineral, is expressly declared by Congress to be included within the meaning of the term "mines."

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 235.

Under this act lands containing valuable deposits of coal are treated as mineral lands.

Townsite of Coalville, In re, 4 C. L. O. 46, p. 47.

Fox, In re, 4 C. L. O. 66.

California, In re, Copp's Min. Lands 340.

Colorado, In re, Copp's Min. Lands 341, p. 342.

4. COAL AND AGRICULTURAL LANDS—DISPOSAL.

This was the first act of Congress regulating the disposal of coal lands and previous to the enactment of this statute land containing coal was not excluded from sale under the acts of Congress regulating the disposal of agricultural lands.

Yoakum, In re, Copp's Min. Lands 339.

Where no rights to coal and iron lands had been acquired under this act or under the act of March 3, 1865 (13 Stat. 529), then such lands passed under the railroad grant of July 2, 1864 (13 Stat. 356).

Union Pac. R. Co. v. Crismon, Copp's Min. Lands 340.

5. COAL LANDS EXCLUDED FROM PREEMPTION.

This act contemplates a distinction between coal beds or coal fields excluded from the preemption act of 1841 as "known mines," and other coal beds or coal fields not coming within that description.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.

See Alabama, In re, 6 L. D. 493, p. 499.

Section 1 of this act provides that when any tracts embrace coal beds or coal fields and which as mines are excluded from preemption may be offered at public sale to the highest bidder on the direction of the President.

United States v. Mullan, 10 Fed. 785, p. 787.
Alabama, In re, 6 L. D. 493, p. 499.

Under this act public lands containing coal beds or coal fields are excluded from the preemption act and may be offered at public sale to the highest bidder on proper notice at a minimum price of \$20 per acre, but if not disposed of they shall then be liable to private entry at the minimum price.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 486.

Lands containing valuable deposits of coal are considered and treated as mineral lands and are excluded from preemption.

Hogden, In re, 1 C. L. O. 135.
Townsite of Coalville, In re, 4 C. L. O. 46, p. 47.
Fox, In re, 4 C. L. O. 66.

6. SETTLERS ON COAL LANDS—PROTECTION.

A settler on coal lands that are offered at any time subsequent to such settlement, as provided by this act, will furnish the settler no protection and give him no right whatever, as in such case the land must go to the highest bidder.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 487.

This act conferred no rights by virtue of settlement nor until after public offering under authority from the President.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 487.

7. COAL LANDS—PUBLIC AND PRIVATE SALE.

By the first section of this act tracts of land embracing coal beds or coal fields constituting a part of the public domain, and which were excluded from preemption under the act of 1841, were to be offered at public sale by an order of the President, and any such tracts not thus disposed of should thereafter be liable to private entry.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 325.

8. COAL LANDS—STATE SELECTIONS.

Under the grant to California the State could not select coal lands in lieu of sections 16 and 36, where such sections were occupied before survey for public uses or taken by private claims.

Mullan v. United States, 118 U. S. 271, p. 276.

Nothing in this act relates specifically to former grants to the State of Alabama or to other States providing that the indemnity lands which that State was authorized to select should be withdrawn from such selection, and there is no inconsistency between it and the grant of the sixteenth section and indemnity lands to Alabama.

Alabama, In re, 6 L. D. 493, p. 499.

13 STAT. 529, MARCH 3, 1865.

COAL LANDS—DISPOSAL—AMENDMENT.

AN ACT Supplemental to the act approved July 1, 1864, for the disposal of coal lands, etc.

Be it enacted, etc., That in the case of any citizen of the United States who, at the passage of this act, may be in the business of bona fide actual coal mining on the public lands, except on lands reserved

by the President of the United States for public uses, for purposes of commerce, such citizen, upon making proof satisfactory to the register and receiver to that effect, shall have the right to enter, according to legal subdivisions, a quantity of land not exceeding 160 acres, to embrace his improvements and mining premises, at the minimum price of \$20 per acre, fixed in the coal and town property act of July 1, 1864: Provided, That where the mining improvements and premises are on lands surveyed at the passage of this act, a sworn declaratory statement descriptive of the tract and premises, showing also the extent and character of the improvements, shall be filed within six months from the date of this act; and proof and payment shall be made within one year from the date of such filing; but where such mining premises may be on lands hereafter to be surveyed, such declaratory statement shall be filed within three months from the return to the district land office of the official township plat; and proof and payment shall be made within one year from the date of such filing.

SEC. 2. And be it further enacted, That in the case of any city or town which, at the passage of this act, may be existing on the public lands, in which the lots therein may be variant as to size from the limitations fixed in the said act of July 1, 1864, and in which the lots and buildings as municipal improvements shall cover an area greater than 640 acres, such variance as to size of lots or excess in area shall prove no bar to such city or town claim, under said act of July 1, 1864, effect to be given to this act according to such regulations as may be prescribed by the Secretary of the Interior: Provided, That the minimum price of each said lots in any such town or city, which may contain a greater number of square feet than the maximum named in the act to which this is an amendment, shall be increased to such reasonable amount as the Secretary of the Interior may by rule establish: Provided, further, That where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof: Provided, however, That nothing contained herein shall be so construed as to recognize any color of title in possessors for mining purposes as against the Government of the United States.

A. PURPOSE AND APPLICATION OF ACT.

B. RIGHT OF COAL MINER TO OBTAIN TITLE, p. 790.

C. TOWN-LOT TITLE SUBJECT TO MINERAL RIGHTS, p. 790.

D. RAILROAD GRANT—ABSENCE OF MINERAL RIGHTS, p. 791.

A. PURPOSE AND APPLICATION OF ACT.

This statute was inapplicable under the system of laws by which the Government proposed to sell its mineral lands upon certain terms and conditions and to give the purchaser possession in anticipation of an absolute conveyance upon performance of certain conditions.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 412.

Under this act an absolute title to mineral lands could not be acquired, but the only right a miner had was possession and the necessary use of his vein which was protected by the statute.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 412.

B. RIGHT OF COAL MINER TO OBTAIN TITLE.

See 13 Stat. 343, p. 786; secs. 2347-2352 R. S., p. 724.

The statute gives to any citizen who may be in the business of bona fide coal mining on the public lands the right to enter such land at the minimum price of \$20 per acre.

United States v. Mullan, 10 Fed. 785, p. 787.

This act, while in a sense preemptive in its character, confers upon a settler no benefit unless he was at the date of the act engaged in the business of coal mining on the tract and unless he was a citizen of the United States.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 487.

Under this supplemental act a citizen of the United States who is actually engaged in coal mining on the public lands may, upon satisfactory proof, have the right to enter a tract not exceeding 160 acres embracing his improvements at the minimum price of \$20 per acre.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 487.

Under this act any citizen in the business of bona fide actual public mining on the public lands for the purpose of commerce may enter according to legal subdivisions a quantity of land not exceeding 160 acres to embrace his improvements and mining premises, and his declaratory statement when the land is surveyed shall be filed within three months from the returns to the district office of the official township plat.

Crismon v. Union Pac. R. Co., 2 C. L. O. 67.

This act authorizes any citizen engaged in the business of bona fide actual coal mining on the public lands to enter by legal subdivisions land not exceeding 160 acres embracing his improvements and mining premises, and in case of unsurveyed lands the declaratory statement shall be filed within three months from the return to the district office of the official township plat.

Crismon v. Union Pac. R. Co., Copp's Min. Lands 340, p. 341.

C. TOWN-LOT TITLE SUBJECT TO MINERAL RIGHTS.

This act, while not excepting mines as such, does provide that town-lot owners take their title subject to the recognized possession of mineral claimants and the necessary use of the surface of such claims.

Papina v. Alderson, In re, 10 C. L. O. 52, p. 53.

This act recognized the possession of mining claims to the same extent that such possessions were recognized by local laws, and protected these as against the right of occupancy and entry by town-site claimants, the same as is now done by section 2386, R. S.

Townsite of Eureka Springs v. Conant, 8 C. L. O. 3, p. 4.

While this statute was enacted at a time when it was the settled policy of the Government not to sell its mineral lands, and when it was impossible for an individual to acquire title to such lands, yet the possessory title to a mine is made superior to that of a lot owned under the town-site act.

Talbott v. King, 6 Mont. 76, p. 99.

This act gives to the mine owner all the title he had and made the title of a lot owner subject thereto, and it is not inconsistent with the act of May 10, 1872 (17 Stat. 91), which opens the public mineral lands to exploration and purchase and gives to the locator of a mining claim the full title on compliance with the law.

Talbott v. King, 6 Mont. 76, p. 99.

D. RAILROAD GRANT—ABSENCE OF MINERAL RIGHTS.

See 13 Stat. 365, p. 1112.

Where rights have attached to coal lands under this act before the line of the railroad was definitely fixed, such land was by the terms of the act of July 2, 1864 (13 Stat. 365), excluded from the grant to said company.

Union Pac. R. Co. v. Crismon, 2 C. L. O. 67.

Where no rights to coal or iron lands had been acquired under this act or under the act of July 1, 1864 (13 Stat. 343), such lands passed under the railroad grant of July 2, 1864 (13 Stat. 365).

Union Pac. R. Co. v. Crismon, Copp's Min. Lands 340.

Where rights had attached to coal land under this act before the line of the railroad was definitely fixed at such land, such land was by the act of July 2, 1864 (13 Stat. 365), excepted from the grant to the railroad company.

Union Pac. R. Co. v. Crismon, Copp's Min. Lands 340, p. 341.

17 STAT. 607, MARCH 3, 1873.

ORIGINAL COAL-LAND ACT.

AN ACT To provide for the sale of the lands of the United States containing coal.

Be it enacted, etc., That any person above the age of 21 years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding 160 acres to such individual person, or 320 acres to such association, upon payment to the receiver of not less than \$10 per acre for such lands, where the same shall be situated more than 15 miles from any completed railroad, and not less than \$20 per acre for such lands as shall be within 15 miles of such road.

SEC. 2. That any person or association of persons severally qualified as above, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the foregoing provisions, of the mines so opened and improved: Provided, That when any association of not less than four persons, severally qualified as in section 1 of this act, shall have expended not less than \$5,000 in working and improving any such mine or mines, such association may enter not exceeding 640 acres, including such mining improvements.

SEC. 3. That all claims under section 2 of this act must be presented to the register of the proper land district within 60 days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor: Provided, That when the township plat is not on file at the date of such improvement, filing must be made within 60 days from the receipt of such plat at the district office: And provided further, That where the improvements shall have been made prior to the expiration of three months from the passage of this act, 60 days from the expiration of said three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this act shall be allowed until the expiration of six months from the date hereof.

SEC. 4. That this act shall be held to authorize only one entry by the same person or association of persons under its provisions; and no association of persons, any member of which shall have taken the benefit of this act, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions of this act; and no member of any association which shall have taken the benefit of this act shall enter or hold any other lands under its provisions; and all persons claiming under section 2 hereof shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 5. That in case of conflicting claims upon lands where the improvements shall be hereafter commenced, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made at the date of the passage of this act, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties; and the Commissioner of the General Land Office shall be, and is hereby, authorized to issue all needful rules and regulations for carrying into effect the provisions of this act.

SEC. 6. That nothing in this act shall be construed to destroy or impair any rights which may have attached prior to its passage, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

NOTE.—This act is incorporated in the Revised Statutes of the United States, sections 2347 to 2352 inclusive, and all annotations are placed with those sections, pp. 724-785.

22 STAT. 457, 1 SUPP. R. S. 404, MARCH 3, 1853.

COAL AND IRON LANDS—ALABAMA—DISPOSAL.

AN ACT To exclude the public lands in Alabama from the operation of the laws relating to mineral lands.

Be it enacted, etc., That within the State of Alabama all public lands, whether mineral or otherwise, shall be subject to disposal only as agricultural lands: Provided however, That all lands which have heretofore been reported to the General Land Office as containing coal and iron shall first be offered at public sale: And provided further, That any bona fide entry under the provisions of the homestead law of lands within said State heretofore made may be patented without reference to an act approved May 10, 1872 (17 Stat. 91), entitled "An act to promote the development of the mining resources of the United States," in cases where the persons making application for such patents have in all other respects complied with the homestead law relating thereto.

See 36 Stat. 583, p. 816.

A. ALABAMA COAL-LAND ACT.

B. ALABAMA LANDS, p. 795.

C. MINERAL LANDS—DISPOSAL, p. 796.

D. HOMESTEAD ENTRY, p. 800.

A. ALABAMA COAL-LAND ACT.

1. APPLICATION AND EFFECT.
2. CONSTRUCTION AND PURPOSE OF ACT.
3. FIRST AND SECOND PROVISOS—CONSTRUCTION.

1. APPLICATION AND EFFECT.

See 3 Stat. 489, p. 1247; 10 Stat. 244, p. 1257; 18 Stat. 474, p. 1279; 23 Stat. 10, p. 1284.

This statute declares what mineral lands shall be disposed of as agricultural lands, and it makes coal lands subject to entry and purchase at private sale; but the provisions of this act in no way repeal the enabling act of Alabama, or take from the State its rights under that act.

Alabama, In re, 6 L. D. 493, p. 501.

By this act Congress exercised the power to make any disposition of land containing coal or iron prior to the exercise of the privilege of purchase under the homestead act of 1880, and while it did not repeal that act, it simply prohibited such lands from being disposed of until after public offering.

Henley, In re, 9 L. D. 173, p. 180.

This act had the effect to remove the necessity of further inquiry from entries of coal lands consummated prior to its passage and to confirm the same.

Jost, In re, 10 C. L. O. 293, p. 294.

This act did not repeal the enabling act of March 2, 1819 (10 Stat. 244), or take from the State its right under that act.

Alabama, In re, 6 L. D. 493.

The right to mineral lands in Alabama is derived solely from this act and not from the homestead act of 1880, and can only be claimed and exercised under the terms and conditions prescribed in this act, and no right of homestead entry can be claimed on mineral lands entered since the passage of this act.

McFerrin, In re, 10 L. D. 140, p. 141.

Under this act coal, a nonmetalliferous mineral, is closely associated with iron, a metalliferous mineral, and both are named in connection with mineral lands.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 240.

2. CONSTRUCTION AND PURPOSE OF ACT.

This act was not intended to change previous constructions of the law respecting mineral lands, but it must be construed together with existing statutes on the same subject.

Caste, In re, 3 L. D. 169, p. 173.

Cadle, In re, 3 L. D. 173.

Jones, In re, 3 L. D. 176.

This act does not create a new suspension of lands as mineral lands after an agent, especially detailed as examiner, reported them as not containing valuable coal and the land office has acted on such report.

Cadle, In re, 3 L. D. 173.

This act prevents the mineral lands from falling back into the system applicable to agricultural lands until they shall first be offered at public sale, with a view that the Government may receive the benefit of such enhanced value as may attach thereto by reason of their being classed as mineral.

Knabe, In re, 8 L. D. 74, p. 75.

It was not the intention of this act that persons who had actually settled upon and improved lands not known to be mineral in character prior to its passage should be compelled to compete with others at a public sale in order to save their homes and improvements.

Knight, In re, 8 L. D. 297, p. 301.

This statute must be construed and understood with reference to the fact that agricultural land and mineral land are both subject to private entry and preemption, and the statute recognizes that there are two classes of lands within the State of Alabama—agricultural and mineral—and was intended to prevent the land containing coal from falling back into the system applicable to agricultural land, and to be disposed of as homesteads at a nominal price, and it accordingly required all lands reported as containing coal and iron to be first offered at public sale and requires that such land shall be offered at public sale before they shall become subject to homestead right or private purchase.

Alabama, In re, 6 L. D. 493, p. 501.

Henley, In re, 9 L. D. 178.

At the time this act was passed coal lands were subject to entry and purchase at private sale the same as agricultural lands, except as to price and amount.

Alabama, In re, 6 L. D. 493.

This act is to be construed in connection with and in relation to the mining laws and, accordingly, if lands are not valuable for mineral they should not be offered at public sale, as the intention of the act is to open a market by a new offering of lands previously withdrawn because reported as containing coal and iron; and to render them subject to suspension from disposal on account of their mineral character they must be found more valuable for mining purposes than for other appropriation.

Cadle, In re, 3 L. D. 173.

3. FIRST AND SECOND PROVISOS—CONSTRUCTION.

The first proviso of this act imposes a condition as to lands which theretofore had been reported as containing coal and iron, and this condition is that such land, before becoming subject to disposal as agricultural lands, must be first offered at public sale.

McFerrin, In re, 10 L. D. 140, p. 141.

The second proviso of this act limits the first and provides for patent for any bona fide entry under the homestead law made before the passage of the act, where the entryman has complied with the homestead law in all other respects except as to the mineral character of the land, but no right of entry is given by this proviso.

Banks, In re, 8 L. D. 532, p. 533 (on review).

McFerrin, In re, 10 L. D. 140, p. 141.

See Caste, In re, 3 L. D. 169.

The second proviso of this act only embraces cases of persons who have in all other respects except as to the character of the land complied with the homestead law.

Banks, In re, 8 L. D. 532, p. 533.

The second proviso of this act protects entries previously made of lands valuable for coal from the operation of the mining statute.

Henley, In re, 9 L. D. 178, p. 179.

The second proviso of this act permits lands in Alabama subject to a bona fide homestead entry made prior to the passage of the act to be patented without reference to the mining statute of 1872.

Henley, In re, 9 L. D. 178, p. 179.

The effect of the proviso in this act is to except or take out of the declaration that the mineral land shall thereafter be disposed of as agricultural lands, but it in no wise affects the rights of the State granted under the act of March 2, 1819 (3 Stat. 489).

Alabama, In re, 6 L. D. 493.

The object of the proviso of this act is to prevent mineral lands in the first place from being entered or disposed of as agricultural lands until they have been once offered at public sale.

Knabe, In re, 8 L. D. 74, p. 75.

The object of the proviso of this act is to except from or take out of the operation of the declaration in the act, to the effect that mineral lands shall thereafter be disposed of as agricultural lands, the class of lands which had been previously reported to and dealt with by the General Land Office as mineral lands, and thus prevent them from falling back into the system applicable to agricultural lands until they shall first be offered at public sale.

Knabe, In re, 8 L. D. 74.

The second proviso of this act only relates to applications for patent on the original homestead entry.

Banks, In re, 8 L. D. 532.

B. ALABAMA LANDS.

1. DISPOSAL AS AGRICULTURAL LANDS.

By this act lands in Alabama were made subject to disposal as agricultural lands which before that time, because of their mineral character, had not been subject to such disposal.

McFerrin, In re, 10 L. D. 140, p. 141.

This act excludes the lands in Alabama from operation of the mineral laws and provides for their disposal the same as agricultural lands, and contemplates the offering at public sale of all vacant lands reported as containing coal or iron, and all applications for such lands prior to the date of the act are void.

Lalley, In re, 10 C. L. O. 55.

Under this act all public lands in Alabama are subject to disposal as agricultural lands, but lands reported to the General Land Office as containing coal and iron shall first be offered at public sale, and where a prior homestead entry is relinquished, such land can be offered at public sale.

Jackson, In re, 10 C. L. O. 240.

Under this act all public lands, whether mineral or otherwise, are subject to disposal only as agricultural lands.

Cordell Placer Mine, In re, 13 C. L. O. 29.

All public lands in Alabama are subject to disposal only as agricultural lands, but all lands reported as containing coal and iron shall be first offered at public auction.

Thornton, In re, 11 L. D. 547, p. 548.

All public lands in Alabama are subject to disposal as agricultural lands, except those reported as containing coal and iron, and under this act lands containing a stone quarry are subject to entry.

Keller v. Burlington, 11 L. D. 140, p. 142.

See Jamison v. Hayden, 15 L. D. 276, p. 277.

The revocation of mineral withdrawals dated April 22, 1880, shifting the burden of proof from agricultural to mineral applicants applied to public lands in Alabama.

Knight, In re, 8 L. D. 297, p. 301.

C. MINERAL LANDS—DISPOSAL.

1. PUBLIC OFFERING BEFORE ENTRY.
2. PUBLIC OFFERING AFTER PASSAGE OF ACT NECESSARY.
3. CANCELLATION OF ENTRY—PUBLIC OFFERING.
4. VESTED RIGHTS OF MINERAL CLAIMANTS PROTECTED.
5. LANDS REPORTED AS CONTAINING COAL AND IRON—ENTRY.
6. RESERVED FROM ENTRY AND SALE.
7. STATE SELECTIONS.
8. VOID ENTRIES.
9. DISCOVERY AFTER ENTRY—EFFECT.
10. PAYMENTS REFUNDED ON ERRONEOUS ENTRIES.

1. PUBLIC OFFERING BEFORE ENTRY.

This act requires all lands heretofore reported as containing coal or iron and remaining undisposed of to be offered for sale at a public sale.

Alabama, In re, 1 L. D. 655.

Jones, In re, 2 L. D. 35.

Jackson, In re, 2 L. D. 36.

Land being vacant and having been reported as containing valuable coal must, under this act, be offered at public sale.

Caste, In re, 3 L. D. 169.

Lands returned as valuable for coal before the passage of this act must be subsequently offered at public sale before they are opened to entry.

Jordan, In re, 7 L. D. 461.

Banks, In re, 7 L. D. 512.

Knight, In re, 8 L. D. 297, p. 299.

Henley, In re, 9 L. D. 178.

Maske, In re, 9 L. D. 203, p. 204.

Evens, In re, 9 L. D. 635.

Avery v. Smith, 12 L. D. 550, p. 551.

Sherer, In re 15 L. D. 563, p. 564.

See Banks, In re (on review), 8 L. D. 532.

Burnum, In re, 14 L. D. 292.

This act confers no rights, except in cases where entries had been made prior to its passage, and that all lands heretofore reported as containing coal and iron which appear as vacant or free from claim must be offered at public sale.

Jones, In re, 3 L. D. 176.

This act confers no rights, except in cases where entries had been made prior to its passage, and that all lands heretofore reported as containing coal and iron which appeared upon the office records as vacant or free from claim must be offered at public sale.

Jones, In re, 3 L. D. 176, p. 177.

A tract of land containing coal which has not been offered at public sale, as required by this act, is not subject to entry.

Jordan, In re, 7 L. D. 461, p. 462.

Lands specified on the original mineral list as being valuable for coal and iron must be offered at public sale before being disposed of.

Bonner, In re, 23 L. D. 251.

Coal lands under this statute are lands reported as valuable for coal and can not be entered until such lands have first been offered at public sale.

Banks, In re, 7 L. D. 512, p. 513.

Lands reported as valuable for coal by a special agent, but covered by an entry at the date of this act, must be offered at public offering as required by the act.

Thornton, In re, 11 L. D. 547, p. 548.

See Evins, In re, 9 L. D. 635.

Lands reported by a special agent as valuable for coal excludes them from subsequent entry under the homestead act until after public offering.

Thornton, In re, 11 L. D. 547, p. 548.

See Jolly, In re, 11 L. D. 557.

2. PUBLIC OFFERING AFTER PASSAGE OF ACT NECESSARY.

The fact that land had been once offered at public sale after it was reported as valuable for coal, but before the passage of this act, does not satisfy the requirement, but it must be offered at public sale after the passage of the act before it is subject to entry.

Knabe, In re, 8 L. D. 74, p. 75.

The offering at public sale contemplated by the proviso in this act means a future offering.

Knabe, In re, 8 L. D. 74, p. 75.

See Knight, In re, 8 L. D. 297.

3. CANCELLATION OF ENTRY—PUBLIC OFFERING.

On the cancellation of an agricultural entry on lands classified as valuable for coal, under this act, they hereby become public lands and can not be disposed of as agricultural lands until offered at public sale, as required by this act.

Jeffray, In re, 4 L. D. 367, p. 368.

An entry may be suspended pending the offering of the land at public sale, as required by this act, and if the same be not sold upon such offer then the entry may be proceeded with as of its original date.

Banks, In re, 8 L. D. 532.

Evins, In re, 9 L. D. 635, p. 636.

4. VESTED RIGHTS OF MINERAL CLAIMANTS PROTECTED.

A mineral claimant, performing all the requirements of the law prior to the passage of this act, obtains a vested right which the act can not impair and should be permitted to make his proof accordingly.

Cordell Placer Mine, In re, 4 L. D. 476, p. 477.

See Harrison, In re, 2 L. D. 767.

American Hill Quartz Mine, In re, 6 C. L. O. 2.

When it is found that a settler has presented his claim under existing rules and offered his final proof as required by law, and such proof shows the necessary residence, cultivation, and improvement to entitle him to the land, in the absence of any question of mineral character originally involved, he can not be further restricted by anything in this act, if such settlement had been duly made and filed for before its passage.

Caste, In re, 3 L. D. 169, p. 172.

This act provides for the future disposition of public lands and has nothing to do with title previously acquired, and such titles, unless impeached for fraud, are valid, and patent can not be withheld upon an entry made prior to the passage of the act

merely because the act requires that before disposal of the public lands as agricultural, all lands heretofore reported as containing coal and iron shall first be offered at public sale; this condition and restriction relate to the lands then public for the future disposition of which the act provides, and if already disposed of they can not be public lands.

Caste, In re, 3 L. D. 169.

See *United States v. Pratt Coal & Coke Co.*, 18 Fed. 708.

This statute provides for the future disposal of public lands, but it has nothing to do with titles previously acquired, and patent could not be withheld upon a placer entry merely because the act requires that before disposal of the public lands as agricultural lands, all lands returned as containing coal and iron shall first be offered at public sale.

Caste, In re, 3 L. D. 169, p. 172.

See *United States v. Pratt Coal & Coke Co.*, 18 Fed. 708.

A settlement on land prior to the date it was reported valuable for coal, and a subsequent entry of record prior to the passage of this act having been made when the settler was disqualified to enter, can confer upon him no rights, and can neither except it from reservation as coal lands nor bring it within the remedy of this act.

Justice v. Alabama, 12 L. D. 635, p. 636.

5. LANDS REPORTED AS CONTAINING COAL AND IRON—ENTRY.

The mere report that land contained iron, without any statement that it is valuable by reason thereof, will not prevent the land from being subject to entry before it is offered, as the inference is that such lands have no value other than for agricultural purposes.

Burnum, In re, 14 L. D. 292, p. 293.

See *Avery v. Smith*, 12 L. D. 550.

Under this statute a distinction is made between land reported as containing coal or iron, and land that was reported as being valuable for coal or iron, and land reported as containing coal or iron is subject to homestead entry, while lands reported as valuable for coal or iron are not subject to such entry until after public offering.

Sherer, In re, 15 L. D. 563.

See Burnum, In re, 14 L. D. 292.

Entries of tracts that have been investigated and reported as valuable for minerals can not be made under this statute.

Burnum, In re, 14 L. D. 292.

Under this section all lands reported valuable for coal prior to the enactment must first be offered at public sale before they are subject to disposal as agricultural lands.

Sherer, In re, 15 L. D. 563.

Harris, In re, 28 L. D. 90, p. 91.

See Burnum, In re, 14 L. D. 292.

The provision that all lands heretofore reported as containing coal and iron shall be offered for public sale before other disposal might possibly have been construed to require such sale even of lands to which inchoate rights had been asserted under homestead laws; but to overcome this it was further provided that in such cases patent might issue without regard to the previous restrictions of the mineral law of 1872 upon proof of compliance in other respects with the existing homestead law; but as to any homestead claimant no question of mineral reservation can be raised.

Caste, In re, 3 L. D. 169.

Lands reported as containing coal and iron could not be entered until they had been first offered at public sale as required by this act.

Banks, In re, 8 L. D. 532.

6. RESERVED FROM ENTRY AND SALE.

Whatever legislation there is upon the subject of reserving mineral lands the effect has always been to reserve them either from the effect of the particular grant in which the reservation is found or to reserve them from cash selection at private entry, and no grants include any lands theretofore granted or reserved for any such purpose whatever.

Alabama, In re, 6 L. D. 493, p. 502.

See Henley, In re, 9 L. D. 178.

7. STATE SELECTIONS.

This act does not require that lands classed as mineral lands shall be first offered at public sale before they shall be subject to the rights of the State to make its selections under and according to the intent of the original enabling act of March 2, 1819.

Alabama, In re, 6 L. D. 493, p. 502.

The provisions of this act refer to lands previously reported as mineral, and Congress did not intend that the State should be allowed to select lands claimed by actual settlers, and upon which such settlers have their homes and improvements, but the excepting clause of the act was designed to protect the rights of actual settlers.

Alabama, In re, 11 C. L. O. 276.

Where selections are hereafter applied for, the selecting agent must certify under oath that the tracts selected are vacant, unimproved public lands of the United States, and not occupied by any settler, and not reserved or appropriated in any manner under the laws of the United States, as the provisions of this act relative to the sale of lands previously reported as mineral can not be regarded as a reservation.

Alabama, In re, 11 C. L. O. 276, p. 277.

8. VOID ENTRIES.

All entries of lands in Alabama previously reported as containing coal or iron made subsequent to the passage of this act were void, and applications which fail to reach the local office prior to the passage of the act should be rejected, though settlement was made prior to the date of the act.

Knight, In re, 8 L. D. 297, p. 300.

See Lalley, In re, 10 C. L. O. 55.

9. DISCOVERY AFTER ENTRY—EFFECT.

The fact that mineral is discovered subsequent to the date of entry will not operate to deprive a settler of the right to perfect his claim where at the date of his entry no mineral was known to exist.

Knight, In re, 8 L. D. 297, p. 301.

Where no mineral was known to exist at the date of filing an entry the subsequent discovery will not operate to deprive a settler of the right to prove his claim on compliance with all legal requirements.

Morrison, In re, 16 L. D. 544, p. 545.

See Caste, In re, 3 L. D. 169.

10. PAYMENTS REFUNDED ON ERRONEOUS ENTRIES.

Where any entry has been erroneously allowed of lands reported as valuable for coal and not having been offered as required by the first proviso of this act, and there

is nothing to indicate that entrymen acted in bad faith in making the entry, the payments made by them may be refunded.

Shannon, In re, 9 L. D. 643.

An application for repayment is, in effect, an abandonment or a waiver of a pending appeal on the cancellation of an entry made on lands reported as valuable for coal prior to the enactment of this statute.

Shannon, In re, 9 L. D. 643.

D. HOMESTEAD ENTRY.

1. EFFECT AND RIGHTS.
2. PROTECTION.
3. SUSPENSION PENDING OFFER.
4. NONMINERAL LANDS—OFFERING NOT REQUIRED.
5. NONMINERAL AFFIDAVIT.

1. EFFECT AND RIGHTS.

The proviso of this act operates upon homestead entries upon lands not subject to such entry but which are bona fide entries under the homestead law, and a homestead entry on mineral lands initiated by settlement under the homestead act of 1880 falls within the scope and reason of this act.

Newman, In re, 8 L. D. 448, p. 449.

Under this act all existing bona fide entries under the homestead laws may be perfected regardless of the mineral character of the land.

Alabama, In re, 1 L. D. 655.

Persons who have settled on lands in Alabama containing coal or iron, with the intention of entering the same under the homestead laws, must have perfected their entry prior to the date of this act.

Lalley, In re, 10 C. L. O. 55.

A settler under the homestead laws who makes an entry under this statute of less than the quantity of lands settled thereby abandons the land not included within such entry.

Jolly, In re, 11 L. D. 557, p. 558.

The purchaser of a relinquishment of a homestead entryman of lands returned as valuable for coal or iron acquires no rights to the land by virtue of the purchase, but such purchase includes improvements only.

Davis, In re, 7 L. D. 560.

Under this act lands reported as mineral must be offered at public sale, but a homestead settlement made upon such lands, though subject to defeasance by public sale, may be recognized as between rival applicants.

Jones v. Mackey, 42 L. D. 487, p. 489.

2. PROTECTION.

This act protects only such homestead entries as had been made prior to its passage.

Evins, In re, 9 L. D. 635.

This statute confirms any bona fide entry under the provisions of the homestead law.

Justice v. Alabama, 12 L. D. 635.

Where there was no entry of record at the time of the passage of this act, yet in view of the homestead act providing for the admission of a homestead claim by settlement, such settlement equally with an entry of record, is within the intent of this act.

Justice v. Alabama, 12 L. D. 635, p. 636.
See Newman, In re, 8 L. D. 448.

The protection granted by this act to bona fide entries does not extend beyond the relinquishment of any such entry.

Henley, In re, 9 L. D. 178, p. 180.
See Davis, In re, 7 L. D. 560.

A mere cultivation of six acres of a tract sought to be entered prior to the date of this act without residence thereon does not bring it within the exception of this statute.

Earnest, In re, 14 L. D. 268, p. 269.

3. SUSPENSION PENDING OFFER.

An application for a homestead or agricultural entry on mineral lands since the passage of this act may be suspended pending the offering of the land at public sale, and if the land is not sold at such offering the application may be considered and passed upon as of the date when originally presented.

McFerrin, In re, 10 L. D. 140, p. 142.
See Banks, In re, 8 L. D. 532.

A good faith homestead entry may be suspended pending offer at public sale, as required by this act, and if the land is not sold, then such entry may be considered as an application to enter as of its original date.

Davis, In re, 15 C. L. O. 246.

A homestead entry allowed in contravention of the terms of this act, and under which valuable improvements were made, may be suspended pending the public offering of the land and treated as an application to enter in the event that the land is not sold at such offering.

Henley, In re, 9 L. D. 178, p. 180.
See Davis, 7 L. D. 560.

An agricultural entry made prior to the passage of this act of lands classified under the act as valuable for coal and consequently abandoned does not serve to except such land from the operation of the statute.

Jeffray, In re, 12 C. L. O. 287.

4. NONMINERAL LANDS—OFFERING NOT REQUIRED.

Lands not known to be mineral at the time of the entry are not required to be offered under this act before entry therefor.

Knight, In re, 8 L. D. 297, p. 301.

Lands classed as "coal, not valuable," are subject to entry notwithstanding this statute.

Avery v. Smith, 12 L. D. 550, p. 551.

5. NONMINERAL AFFIDAVIT.

A nonmineral affidavit filed by an applicant for an entry of land for agricultural purposes is deemed sufficient, and when a person alleges land to be mineral he is required to affirmatively prove the allegation.

Caste, In re, 3 L. D. 169, p. 170.

II. COAL-MINES INSPECTION.

26 STAT. 1104, 1 SUPP. R. S. 943, MARCH 2, 1891.

COAL-MINES INSPECTION.

AN ACT For the protection of the lives of miners in the Territories.

Be it enacted, etc., That in each organized and unorganized Territory of the United States wherein are located coal mines, the aggregate annual output of which shall be in excess of 1,000 tons per annum, the President shall appoint a mine inspector, who shall hold office until his successor is appointed and qualified. Such inspector shall, before entering upon the discharge of his duties, give bond to the United States in the sum of \$2,000, conditioned for the faithful discharge of his duties.

SEC. 2. That no person shall be eligible for appointment as mine inspector under section 1 of this act who, is not either a practical miner or mining engineer and who has not been a resident for at least six months in the Territory for which he shall be appointed; and no person who shall act as land agent, manager, or agent of any mine, or as mining engineer, or be interested in operating any mine in such Territory shall be at the same time an inspector under the provisions of this act.

SEC. 3. That it shall be the duty of the mine inspector provided for in this act to make careful and thorough inspection of each coal mine operated in such Territory, and to report at least annually upon the condition of each coal mine in said Territory with reference to the appliances for the safety of the miners, the number of air or ventilating shafts, the number of shafts or slopes for ingress or egress, the character and condition of the machinery for ventilating such mines, and the quantity of air supplied to same. Such report shall be made to the governor of the Territory in which such mines are located and a duplicate thereof forwarded to the Secretary of the Interior, and in the case of an unorganized Territory directly to the Secretary of the Interior.

SEC. 4. That in case the said mine inspector shall report that any coal mine is not properly constructed or not furnished with reasonable and proper machinery and appliances for the safety of the miners and other employees it shall be the duty of the governor of such organized Territory it shall be the duty of the Secretary of the Interior to give notice to the owners or managers of said coal mine that the said mine is unsafe and notifying them in what particular the same is unsafe, and requiring them to furnish or provide such additional machinery, slopes, entries, means of escape, ventilation, or other appliances necessary to the safety of the miners and other employees within a period to be in said notice named, and if the same be not furnished as required in such notice it shall be unlawful after the time fixed in such notice for the said owners or managers to operate said mine.

SEC. 5. That in all coal mines in the Territories of the United States the owners or managers shall provide at least two shafts, slopes, or other outlets, separated by natural strata of not less than 150 feet in breadth, by which shafts, slopes, or outlets distinct means of ingress and egress shall always be available to the persons employed in said mine. And in case of the failure of any coal mine to be so provided it shall be the duty of the mine inspector to make report of such fact, and thereupon notice shall issue, as provided in section 4 of this act, and with the same force and effect.

SEC. 6. That the owners or managers of every coal mine at a depth of 100 feet or more shall provide an adequate amount of ventilation of not less than 55 cubic feet of pure air per second, or 3,300 cubic feet per minute, for every 50 men at work in said mine, and in like proportion for a greater number, which air shall by proper appliances or machinery be forced through such mine to the face of each and every working place, so as to dilute and render harmless and expel therefrom the noxious or poisonous gases; and all workings shall be kept clear of standing gas.

SEC. 7. That any mine owner or manager who shall continue to operate a mine after failure to comply with the requirements of this act and after the expiration of the period named in the notice provided for in section 4 of this act, shall be deemed guilty of a misdemeanor, and shall be fined not to exceed \$500.

SEC. 8. That in no case shall a furnace shaft be used or for the purposes of this act be deemed an escape shaft.

SEC. 9. That escape shafts shall be constructed in compliance with the requirements of this act within six months from the date of the passage hereof, unless the time shall be extended by the mine inspector, and in no case shall said time be extended to exceed one year from the passage of this act.

SEC. 10. That a metal-speaking tube from the top to the bottom of the shaft or slope shall be provided in all cases, so that conversation may be carried on through the same.

SEC. 11. That an approved safety catch shall be provided and sufficient cover overhead on every carriage used in lowering or hoisting persons. And the mine inspector shall examine and pass upon the adequacy and safety of all such hoisting apparatus.

SEC. 12. That no child under 12 years of age shall be employed in the underground workings of any mine. And no father or other person shall misrepresent the age of anybody so employed. Any person guilty of violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed \$100.

SEC. 13. That only experienced and competent and sober men shall be placed in charge of hoisting apparatus or engines. And the maximum number of persons who may ascend or descend upon any cage or hoisting apparatus shall be determined by the mine inspector.

SEC. 14. That it shall be lawful for any inspector to enter and inspect any coal mine in his district and the work and machinery belonging thereto at all reasonable times, but so as not to impede or obstruct the working of the mine; and to make inquiry into the state of the mine, works, and machinery, and the ventilation and mode of lighting the same, and into all matters and things connected with or

relating to the safety of the persons employed in or about the same, and especially to make inquiry whether the provisions of this act are complied with; and the owner or agent is hereby required to furnish means necessary for such entry, inspection, examination and inquiry, of which the said inspector shall make an entry in the record in his office, noting the time and material circumstances of the inspection.

SEC. 15. That in all cases of fatal accident a full report thereof shall be made by the mine owner or manager to the mine inspector, said report to be in the writing and made within ten days after such death shall have occurred.

SEC. 16. That as a cumulative remedy, in case of the failure of any owner or manager of any mine to comply with the requirements contained in the notice of the governor of such Territory or the Secretary of the Interior, given in pursuance of this act, any court of competent jurisdiction, or the judge of such court in vacation, may, on the application of the mine inspector in the name of the United States and supported by the recommendation of the governor of said Territory, or the Secretary of the Interior, issue an injunction restraining the further operation of such mine until such requirements are complied with, and in order to obtain such injunction no bond shall be required.

SEC. 17. That wherever the term "owner or manager" is used in this act the same shall include lessees or other persons controlling the operation of any mine. And in case of the violation of the provisions of this act by any corporation the managing officers and superintendents, and other managing agents of such corporation, shall be personally liable and shall be punished as provided in act for owners and managers.

SEC. 18. That the mine inspectors provided for in this act shall each receive a salary of \$2,000 per annum, and their actual traveling expenses when engaged in their duties.

SEC. 19. That whenever any organized Territory shall make or has made provision by law for the safe operation of mines within such Territory, and the governor of such Territory shall certify said fact with a copy of the said law to the Secretary of the Interior, then and thereafter the provisions of this act shall no longer be enforced in such organized Territory, but in lieu thereof the statute of such Territory shall be operative in lieu of this act.

A. COAL-MINES INSPECTION ACT.

1. VALIDITY OF ACT FOR MINE INSPECTION.
2. COAL MINES—POWER OF STATES TO INSPECT AND REGULATE.
3. DUTIES AND LIABILITIES OF MINE OWNERS AND OPERATORS.
4. VENTILATION OF MINES—DUTIES IMPOSED.

1. VALIDITY OF ACT FOR MINE INSPECTION.

A statute providing for the inspection of coal mines at least four times a year is not unconstitutional because of the fact that a discretion is vested in the inspector permitting an inspection as often as he might deem it necessary and proper.

St. Louis Consol. Coal Co. v. Illinois, 185 U. S. 203, p. 207.

2. COAL MINES—POWER OF STATES TO INSPECT AND REGULATE.

It is within the power of a State legislature to provide for the appointment of mine inspectors and for their payment by mine owners.

St. Louis Consol. Coal Co. v. Illinois, 185 U. S. 203, p. 207.

A State legislature may make its mining regulations applicable to coal mines where more than five men are employed at any one time.

St. Louis Consol. Coal Co. v. Illinois, 185 U. S. 203, p. 207.

The regulation of mines and miners, their hours of labor, and the necessary precautions that shall be taken to secure their safety and health are within the police power of a State.

St. Louis Consol. Coal Co. v. Illinois, 185 U. S. 203, p. 207.

3. DUTIES AND LIABILITIES OF MINE OWNERS AND OPERATORS.

This act makes the duty of the mine owner absolute and not relative, and makes the test and measure of duty the command of the statute and not what a reasonable person would or would not do.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 420.

By this statute Congress has prescribed duties that can not be omitted, and the lives of miners are not intended to be committed to the chance that the care or duty of someone else will counteract the neglect and disregard of the legislative mandate.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 420.

Where an occupation is attended with danger to life or limb, it is incumbent upon the promoters thereof to employ competent persons and to take all reasonable and needed precautions to secure safety to the employees, and for any neglect in this respect from which injury follows to such employees, such employers may be held responsible to the extent of any injury inflicted by reason of such neglect.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 415.

Occupations which can not be conducted without necessary danger to life and limb should not be prosecuted at all without reasonable precaution against such dangers afforded by science. The necessary danger attending them should operate as a prohibition of their pursuit without such safeguards, and in all occupations attended with great and unusual danger there must be used all appliances readily obtainable known to science for the prevention of accidents and injury, and a neglect to provide such readily obtainable appliances and to keep the same in proper and suitable condition is regarded as proof of neglect.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 416.

If either of the requirements of section 6 is omitted or neglected, the owner or operator of the mine is liable for any resulting damages.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 419.

4. VENTILATION OF MINES—DUTIES IMPOSED.

This act does not give to mine owners the privilege of reasoning on the sufficiency of the appliances for ventilation, or leave to their judgment the amount of ventilation sufficient for the protection of the miner.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 420.

Section 6 requires: (1) Ventilation of not less than 55 feet of pure air per second for every 50 men at work, and in like proportions for a greater number; (2) proper appli-

ances and machinery to force the air through the mine to the face of the working places; (3) keeping all workings free from standing gas.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 419.

Section 6 prescribes the amount of ventilation and the machinery to be adequate to force that amount of air through the mine.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 420.

It is made the duty of the owner or operator of a coal mine at a depth of more than 100 feet below the surface to provide an adequate amount of ventilation of not less than 35 cubic feet of pure air per second for every 50 men working in his mine. This air must be by proper appliances forced through the mine to the face of each working place, so as to dilute and render harmless and expel therefrom the noxious or poisonous gases, and all the workings of such mine must be kept clear of standing gas in dangerous quantities. Any owner or operator of a coal mine failing or neglecting his duty in this respect is liable for any resulting injuries to the miners.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 415.

This act does not permit standing gas, but on the contrary prescribes that the mine shall be kept clear of standing gas, and this duty is imperative, and the consequences of neglecting it can not be excused because some workman may disregard instructions.

Deserant v. Cerillos Coal R. Co., 178 U. S. 409, p. 420.

32 STAT. 631, 1 SUPP. R. S. 948-50, JULY 1, 1902.

COAL-MINES INSPECTION—AMENDMENT.

AN ACT To amend an act entitled "An act for the protection of the lives of miners in the Territories."

Be it enacted, etc., That section 6 of the act entitled "An act for the protection of the lives of miners in the Territories" be amended by striking out "3,300" and inserting "5,000," so as to read:

"SEC. 6. That the owners or managers of every coal mine shall provide an adequate amount of ventilation of not less than 83½ cubic feet of pure air per second, or 5,000 cubic feet per minute for every 50 men at work in said mine, and in like proportion for a greater number, which air shall by proper appliances or machinery be forced through such mine to the face of each and every working place, so as to dilute and render harmless and expel therefrom the noxious or poisonous gases. Wherever it is practicable to do so the entries, rooms, and all openings being operated in coal mines shall be kept well dampened with water to cause the coal dust to settle, and that when water is not obtainable at reasonable cost for this purpose accumulations of dust shall be taken out of the mine, and shall not be deposited in way places in the mine where it would be again distributed in the atmosphere by the ventilating currents: Provided, That all owners, lessees, operators of, or any other person having the control or management of any coal shaft, drift, slope or pit in the Indian Territory, employing 20 or more miners to work in the same, shall employ shot firers to fire the shots therein. Said shots shall not be fired to exceed one per day; at 12 o'clock noon in cases where the miners work but half a day and at 5 o'clock in the evening when the mine is working three-quarters or full time, and they shall not be fired until after all miners and other employees working in said shafts, drifts, slopes or pits, shall be out of same. The violation of this act shall constitute a misdemeanor and any person convicted of such violation shall pay a fine of not exceeding \$500.

A. COAL-DUST ACCUMULATIONS.

1. DUTY TO DAMPEN MINES.
2. MINERS AND MINE OPERATORS—RELATIVE DUTIES.
3. EXPLOSION OF COAL DUST—LIABILITY OF MINE OPERATOR.

- 1. DUTY TO DAMPEN MINES.

Congress by this act intended, without determining the question of the inflammability of coal dust in the mine, to minimize the danger from the presence of an accumulation of such dust by requiring either its removal or the mine owner to keep it well dampened with water to cause the dust to settle, as the danger of ignition or the deleterious effect of such dust was to be apprehended from the particles being distributed in the atmosphere, and that this could be reasonably prevented by dampening the deposits of such dust.

Bolen-Darnell Coal Co. v. Williams, 164 Fed. 665, p. 667.

Under this statute a mine owner is not guilty of negligence where he keeps the coal dust in the mine well dampened with water and so sprinkles the mine as to cause the dust to settle, and is not liable from the mere fact of the accumulation of coal dust in the mine.

Bolen-Darnell Coal Co. v. Williams, 164 Fed. 665, p. 667.

2. MINERS AND MINE OPERATORS—RELATIVE DUTIES.

The law does not impose upon a miner working in a coal mine the duty of exercising care and prudence to discover the condition of the mine before going to work, but this statute imposes upon the mine owner and operator the duty of exercising reasonable care to see that a mine is in a reasonably safe condition for the miners to work in; but if the defective or dangerous condition is so obvious to the miner as to make it apparently dangerous to work in, and he voluntarily works there without complaint, he assumes the risk of the danger.

Bolen-Darnell Coal Co. v. Williams, 164 Fed. 665, p. 669.

3. EXPLOSION OF COAL DUST—LIABILITY OF MINE OPERATOR.

A miner injured by an explosion of coal dust in a mine can not recover under this statute on a general charge of negligence in permitting great quantities of inflammable coal dust to accumulate in the mine where the mine owner shows he did obtain water and did in fact sprinkle the mine.

Bolen-Darnell Coal Co. v. Williams, 164 Fed. 665, p. 668.

In an action against a coal-mine operator for injuries resulting from an explosion of coal dust from the alleged negligence and carelessness of such operator in permitting great quantities of coal dust to accumulate in its mine, it is error for the court in its instruction to the jury on the trial of the case to ignore in its charge one of the principal issues involved in the defense and supported by the evidence, to the effect that the operator kept the mine well dampened with water.

Bolen-Darnell Coal Co. v. Williams, 164 Fed. 665, p. 668.

MINE-INSPECTION ACTS—APPROPRIATIONS FROM 1892 TO 1910.

27 STAT. 123, p. 206, JULY 16, 1892.

AN ACT Making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1893.

Be it enacted, etc., * * *

MINE INSPECTORS: For salaries of three mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for

the protection of the lives of miners in the Territories, at \$2,000 per annum each; for per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, \$5,000; in all \$11,000.

27 STAT. 675, p. 697, MARCH 3, 1891.

MINE INSPECTORS: For salaries of three mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each; for per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, \$5,000; in all, \$11,000.

28 STAT. 162, p. 194, JULY 31, 1894.

MINE INSPECTORS: For salaries of three mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each; \$6,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, \$5,000.

28 STAT. 764, p. 796, MARCH 2, 1895.

MINE INSPECTORS: For salaries of three mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104); for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$6,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, \$5,000.

29 STAT. 140, p. 162, MAY 28, 1896.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, \$3,350.

29 STAT. 532, p. 567, FEBRUARY 19, 1897.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, \$3,350.

20 STAT. 277, p. 205, MARCH 15, 1890.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, \$3,350.

20 STAT. 246, p. 276, FEBRUARY 24, 1891.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

21 STAT. 26, p. 122, APRIL 17, 1900.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

21 STAT. 260, p. 297, MARCH 2, 1901.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

22 STAT. 120, p. 152, APRIL 25, 1902.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

22 STAT. 354, p. 351, FEBRUARY 25, 1902.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

23 STAT. 26, p. 125, MARCH 12, 1904.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

23 STAT. 631, p. 671, MARCH 3, 1905.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

24 STAT. 320, p. 430, JUNE 22, 1906.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

24 STAT. 325, p. 975, FEBRUARY 26, 1907.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

35 STAT. 124, p. 226, MAY 22, 1908.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each, while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

35 STAT. 245, p. 269, MARCH 4, 1909.

MINE INSPECTORS: For salaries of two mine inspectors, authorized by the act approved March 3, 1891 (26 Stat. 1104), for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, \$3,350.

For appropriations since 1910, see Bureau of Mines, p. 921.

35 STAT. 124, p. 226, MAY 22, 1908.

MINE EXPLOSIONS—APPROPRIATIONS.

AN ACT Making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1909.

Be it enacted, etc., * * *

For continuing the work authorized by the act approved March 3, 1891 (26 Stat. 1104), and for the protection of the lives of miners in the Territories and in the District of Alaska, and for conducting investigations as to the causes of mine explosions with a view to increasing safety in mining, to be immediately available, \$150,000, of which sum not more than \$50,000 may be used for salaries.

35 STAT. 245, p. 269, MARCH 4, 1909.

MINE EXPLOSIONS—APPROPRIATIONS.

Be it enacted, etc., * * *

For continuing the investigations as to the causes of mine explosions with a view to increasing safety in mining, to be immediately available, \$150,000.

For appropriations since 1910, see Bureau of Mines, p. 921.

III. COAL DEPOSITS RESERVED.

35 STAT. 644, MARCH 2, 1909.

COAL LANDS—COAL DEPOSITS RESERVED—NONMINERAL SELECTIONS.

AN ACT For the protection of the surface rights of entrymen.

Be it enacted, etc., That any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction: Provided, That the owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit: Provided further, That nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector, or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

A. COAL DEPOSITS RESERVED.

1. PURPOSE OF ACT—TITLE TO SURFACE COAL LANDS.
2. NONCOAL ENTRYMAN PROTECTED—RIGHT TO RESTRICTED PATENT.
3. APPLICANT—BENEFIT OF ACT—GOOD FAITH—HEARING.
4. NONCOAL ENTRY—MINERAL LANDS—DETERMINATION—BURDEN.
5. WITHDRAWAL FOR CLASSIFICATION—EFFECT AND RIGHTS.
6. WITHDRAWAL—EFFECT ON SOLDIERS' CLAIMS.
7. SELECTIONS BY STATE—TIME FOR DETERMINING MINERAL CHARACTER.
8. OIL LANDS WITHDRAWN—APPLICATION OF ACT.

1. PURPOSE OF ACT—TITLE TO SURFACE COAL LANDS.

This act should be construed in reference to nonmineral claims with the act of June 22, 1910 (36 Stat. 583), and the act of June 25, 1910 (36 Stat. 847), as having one purpose in common and that is the ultimate designation and classification of lands valuable for their coal deposits and the disposal of title to the surface for agricultural purposes separate and apart from the coal deposits, and the object was to effect reservation of the coal without tying up the surface from agricultural use.

Gunn, *In re*, 39 L. D. 561, p. 564.

This act permits the issuance of surface patents to land containing valuable coal deposits, thereby protecting the interests of the Government in such coal deposits.

Zuckman, *In re*, 40 L. D. 25, p. 26.

See Gunn, *In re*, 39 L. D. 561.

One purpose of this act is to protect persons who in good faith have located or entered, under nonmineral laws, public lands which are thereafter classified as valuable for coal, and gives any such person the right to take a surface patent unless such right is defeated by the withdrawal for coal classification.

Gunn, *In re*, 39 L. D. 561, p. 563.

2. NONCOAL ENTRYMAN PROTECTED—RIGHT TO RESTRICTED PATENT.

A good-faith homestead claimant is entitled to take a restricted patent to coal lands under this act.

Conway v. Brooks, 39 L. D. 337, p. 338.

Coal lands embraced in a homestead entry making such entry chiefly valuable for the coal will not deprive the entryman of a restricted patent under this act, if otherwise within its provisions, as this act is remedial in character and applies to persons who have in good faith located any lands under the nonmineral land laws and which lands are subsequently classified as being valuable for coal.

Martin v. Gilbert 38 L. D. 536, p. 538.

An applicant for patent for land that is subsequently withdrawn and classified as valuable for coal may, on his election, take a limited patent therefor, reserving to the United States the coal deposits in the land.

Hurley, *In re*, 40 L. D. 591, p. 592.

An applicant may on his election be granted a limited patent under this act for lands in the Southern Ute Indian Reservation, open to settlement and entry under the desert, homestead, and townsite laws, and the laws governing the disposal of coal, mineral, stone, and timber lands, but he can not claim patent for such lands under the soldiers' additional right statute.

Sloan, *In re*, 40 L. D. 550.

An unrestricted patent for coal lands can not be issued to a homestead entryman who made his entry after the classification of such land as coal, though based upon settlement initiated prior to the classification.

Roots, *In re*, 42 L. D. 82, p. 83.

Denying McClinton, *In re*, 40 L. D. 26.

See Hindman, *In re*, 42 L. D. 327.

Miller, *In re*, 40 L. D. 33.

3. APPLICANT—BENEFIT OF ACT—GOOD FAITH—HEARING.

In determining whether or not an applicant is entitled to the benefit of this remedial act it is competent for the Land Department to inquire into his good faith, to know whether or not there has been a compliance with the requirements of the general law, under which a nonmineral entry was made.

Blinn, *In re*, 40 L. D. 97, p. 101.

This act entitles a person who in good faith enters land which is afterward classified as coal land to receive a limited patent therefor containing a reservation of the coal to the United States, or such person is entitled to a hearing to determine whether or not such land is in fact valuable for coal.

Culver, *In re*, 40 L. D. 593.

Where a nonmineral entryman, whose land is subsequently classified as valuable for coal, refuses to accept a restricted patent under this act, then a hearing may be had and testimony taken as to the character of the land, and the burden is upon the United States to show that the land is chiefly valuable for coal.

Hindman, *In re*, 42 L. D. 327, p. 329.

4. NONCOAL ENTRY—MINERAL LANDS—DETERMINATION—BURDEN.

In a contest to cancel a nonmineral entry it is not necessary in order to declare the land mineral in character that personal knowledge of the existence of the mineral deposits be brought home to the entryman, where the particular land laws in the region well known for its coal deposits, within a few miles of a worked mine in which the dip of the coal beds is disclosed, as this is sufficient to charge the public generally that the knowledge of the coal character of the land; and it is the duty of an entryman to be familiar with the facts of common knowledge, and he can not escape consequences by pleading personal ignorance.

Roberts, *In re*, 41 L. D. 639, p. 641.

In determining the character of land as to whether it is coal or noncoal, the department will take into consideration not only surface indications upon the particular land, but the geological formation of and discoveries of coal upon adjacent or nearby land; and especially with respect to coal deposits whose peculiar formation is of such a bedded or general flat nature and of such wide extent and regularity as to permit a geologist or expert miner to determine its existence under large areas by examination of geological formation and the characteristics of the coal and its dip as exposed in nearby workings.

Roberts, *In re*, 41 L. D. 639, p. 640.

The fact that an entryman who seeks a tract of public land under nonmineral law is so inexpert as to be unable to determine the existence of mineral upon the land will not warrant the disposition of mineral lands under nonmineral law.

Roberts, *In re*, 41 L. D. 639, p. 641.

A claimant may, under this act, be accorded a hearing in case he should elect not to take surface patent, but instead thereof should dispute the alleged coal character of the land and demand a hearing with a view of establishing his right to an unrestricted patent.

Gunn, *In re*, 39 L. D. 561, p. 564.

Lands classified as coal are, from the date of such classification, *prima facie* mineral in character, and where the final certificate had not issued prior to the date of such classification, a nonmineral claimant, applicant, or entryman would have the burden of proof in a hearing ordered as the result of a field investigation on a charge that the lands were mineral, and otherwise the burden would be upon the Government to prove that the lands were known to be mineral prior to the issuance of final certificate.

Kinkade v. California, 39 L. D. 491, p. 494.

See Johnson v. Northern Pac. R. Co., 40 L. D. 321.

Where there are no surface indications of coal and no record evidence of the withdrawal of the land because of coal value at the time an entry was allowed, the tract can not be said to be classified, claimed, or reported as being valuable for coal before the allowance of the entry, and accordingly a patent should be granted under the provisions of this act.

Martin v. Gilbert, 38 L. D. 536.

5. WITHDRAWAL FOR CLASSIFICATION—EFFECT AND RIGHTS.

A withdrawal of land for classification as coal land constitutes a claim or report of coal value within the meaning of this statute.

Moore, In re, 40 L. D. 461, p. 462.

A mere withdrawal of a tract for coal classification purposes constitutes, within the meaning of this act, a claim or report that such land is valuable for coal.

Moore, In re, 40 L. D. 461, p. 462.

McCleary, In re, 42 L. D. 601, p. 602.

6. WITHDRAWAL—EFFECT ON SOLDIERS' CLAIMS.

See 17 Stat. 333, p. 1237; 36 Stat. 583-A-8, p. 820.

A pending application to locate a soldiers' additional right claim made prior to June 22, 1910, is not defeated by a withdrawal of lands for coal classification and does not bar the right under this act to take a limited patent for such land.

Moore, In re, 40 L. D. 461, p. 462.

7. SELECTIONS BY STATE—TIME FOR DETERMINING MINERAL CHARACTER.

The proper time to ascertain the character of lands applied for by the State as to whether they are desert and nonmineral is at the time of segregation, yet the State obtains no vested right or interest by reason of such segregation, as this operates merely as a withdrawal of the lands for the purposes of the act, and the title of the State depends upon subsequent conditions, and even the approval of the segregation list does not fix the status of the land as conclusively nonmineral, but the State must furnish satisfactory proof showing compliance with the law and no complete equitable title to the lands vested in the State until final approval of the patent list.

Wyoming, In re, 38 L. D. 508, p. 511.

See *Miller v. Thompson*, 36 L. D. 492.

Walker, In re, 36 L. D. 495.

California, In re, 37 L. D. 499.

Barden v. Northern Pacific R. Co., 154 U. S. 288.

The word "person," as used in this act, includes a State, and when lands embraced in a State selection under the act are afterwards classified as coal, the State is entitled to the right of election given by the act.

Utah, In re, 38 L. D. 245, p. 246.

Where a coal classification of lands is made and adhered to the State will then be called upon to take patent with a reservation of the coal deposits or to proceed to a hearing to ascertain and adjudicate the character of the land, and in such proceeding the burden of sustaining the coal classification is upon the Government.

Wyoming, In re, 38 L. D. 508, p. 512.

No title is acquired under or by virtue of a school indemnity selection until the same has been duly approved and certified, and a disclosure that any land is mineral prior to such approval will defeat a selection.

Kinkade v. California, 39 L. D. 491, p. 494.

8. OIL LANDS WITHDRAWN—APPLICATION OF ACT.

The rules relative to nonmineral applications for land later withdrawn or classified as oil are analogous to similar applications for lands later classified as coal, or withdrawn; and the procedure adopted relative thereto prior to the passage of these acts, permitting the issuance of surface patent, should govern.

Kinkade v. California, 39 L. D. 491, p. 494.

See *Johnson v. Northern Pac. R. Co.*, 40 L. D. 321.

IV. AGRICULTURAL ENTRIES ON COAL LANDS.

36 STAT. 522, JUNE 22, 1912.

COAL LANDS—AGRICULTURAL ENTRIES.

AN ACT To provide for agricultural entries on coal lands.

Be it enacted, etc., That from and after the passage of this act unreserved public lands of the United States, exclusive of Alaska which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert-land law, to selection under section 4 of the act approved August 18, 1894, known as the Carey Act, and to withdrawal under the act approved June 17, 1902, known as the Reclamation Act, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same. But no desert entry made under the provisions of this act shall contain more than 160 acres, and all homestead entries made hereunder shall be subject to the conditions, as to residence and cultivation, of entries under the act approved February 19, 1909, entitled "An act to provide for an enlarged homestead:" Provided, That those who have initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or classified as coal lands may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

SEC. 2. That any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section 4 of the act of August 18, 1894 (28 Stat. 372), known as the Carey Act, and the Secretary of the Interior in withdrawing under the Reclamation Act (32 Stat. 388) lands classified as coal lands, or valuable for coal, with a view of securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of this act.

SEC. 3. That upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the lands so patented, together with the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this act, for the purpose of prospecting for coal thereon upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the pay-

ment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: Provided, That the owner under such limited patent shall have the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: Provided further, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

A. COAL LANDS—AGRICULTURAL ENTRIES.

1. PURPOSE OF ACT—LIMITED PATENT.
2. APPLICATION OF ACT TO WITHDRAWALS FOR CLASSIFICATION.
3. ACT EXTENDED TO SELECTIONS BY STATE.
4. WITHDRAWAL FOR AND METHOD OF CLASSIFICATION.
5. WITHDRAWAL—EFFECT AND RIGHTS OF NONCOAL APPLICANT.
6. WITHDRAWAL—SUBSEQUENT SELECTIONS—ACT GOVERNING.
7. SURFACE ENTRY PERMITTED OR WITHDRAWAL ORDERED.
8. WITHDRAWALS—SOLDIERS' RIGHTS.
9. NONMINERAL ENTRY BEFORE WITHDRAWAL—VALIDITY AND PROTECTION.
10. CLASSIFICATION—WHAT CONSTITUTES—EFFECT AS TO PRICE.
11. CLASSIFICATION—EVIDENCES OF MINERAL CHARACTER.
12. CLASSIFICATION—EFFECT ON PRIOR SELECTIONS—RIGHT TO LIMITED PATENT.
13. CLASSIFICATION—SUBSEQUENT HEARING TO DISPROVE.
14. CLASSIFICATION OF INDIAN LANDS—EFFECT.
15. DISPOSAL AFTER CLASSIFICATION.
16. HOMESTEAD APPLICATION—SUFFICIENCY AND SHOWING.
17. HOMESTEAD PATENT—NO CANCELLATION.

1. PURPOSE OF ACT—LIMITED PATENT.

The purpose of the proviso to section 1 of this act was manifestly to permit the issuance of a limited patent in cases which were left unprotected by the act of March 3, 1909 (35 Stat. 844).

McCleary, *In re*, 42 L. D. 601, p. 602.

A literal interpretation of the proviso to section 1 might be restricted to cases in which final entry had been allowed prior to the passage of the act, but the proviso is remedial in character and should be liberally construed.

McCleary, *In re*, 42 L. D. 601, p. 603.

The proviso of section 1 applies to cases in which final entries have been allowed upon withdrawn lands prior to the adoption of this act.

McCleary, In re, 42 L. D. 601, p. 603.
See Moses, In re, 40 L. D. 276.

2. APPLICATION OF ACT TO WITHDRAWALS FOR CLASSIFICATION.

The provisions, limitations, exceptions, and conditions contained in this act apply to certain lands in the Hailey, Idaho, land district, withdrawn from settlement, location, or sale for examination and classification with respect to coal value by Executive order of August 24, 1910, under the authority of the act of June 25, 1910 (36 Stat. 847).

Woodhouse, In re, 41 L. D. 145, p. 146.

The provisions of section 3 apply to lands only which have been classified as coal and can not be applied to lands which have been merely withdrawn for the purpose of classification.

Tschirgi, In re, 41 L. D. 319, p. 320.

3. ACT EXTENDED TO SELECTIONS BY STATE.

Congress, by the act of April 30, 1912 (37 Stat. 105), extended the operation of this act to selections by the several States within whose limits the lands are situated under grants made by Congress; and such selections may be made upon lands which have been withdrawn or classified as coal lands or are valuable for coal, but the patents issued therefor must contain a reservation to the United States of the coal in such land and of the right to prospect for, mine, and remove the same.

Wyoming, In re, 41 L. D. 19, p. 20.

4. WITHDRAWAL FOR AND METHOD OF CLASSIFICATION.

The withdrawal of coal lands is for the purpose of classification, and this is to be accomplished in such manner as may be found most appropriate to effect that purpose and to permit controversies between applicants and the United States concerning the character of the land prior to such classification, would not only harass the Government in effectuating the purpose of the withdrawal, but would also cause needless expense and labor in connection with many tracts that probably would be eliminated from the withdrawal upon classification and thus render unnecessary any hearing upon the question.

Woodhouse, In re, 41 L. D. 145, p. 147.

5. WITHDRAWAL—EFFECT AND RIGHTS OF NONCOAL APPLICANT.

An order of withdrawal of land under this act, making preliminary designation of the land as coal, assumed that there might be some lands which would prove to be noncoal in character, and accordingly nonmineral claims accepted for lands so withdrawn on the execution and filing of affidavits alleging the land to be nonmineral, and the nonmineral claimant therefore voluntarily assumed the burden of establishing the noncoal character of the land, and such an entry was not protected by the act of March 3, 1909 (35 Stat. 844), and such an entry must have been canceled except for the proviso to section 1 of this act, and the entryman is permitted to take the limited patent provided for.

McCleary, In re, 42 L. D. 601, p. 603.

The provision that lands withdrawn or classified as coal shall be subject to entry under other laws and reserving to the United States the coal in such lands does not include

soldiers' additional right, as no settlement or cultivation is required under a soldiers' additional right entry, and such entry is not one of the classes mentioned and can not be made under section 1 of this act.

Jenne, In re, 40 L. D. 408, p. 409.

This and other statutes, as well as the Executive order of July 2, 1910, recognize the validity of the order of withdrawal known as Petroleum Reserve No. 2, dated September 27, 1909, and the department must recognize and enforce the withdrawal order.

Lowell, In re, 40 L. D. 303, p. 306.

Where a withdrawal of coal lands preceded the filing of an application, the case falls within the terms of this act and not within the purview of the act of March 3, 1909 (35 Stat 844).

McCleary, In re, 42 L. D. 601, p. 602.

This act makes no provision for the initiation after its passage of any agricultural claim to lands withdrawn as coal lands, except under the homestead and desert land laws and the Reclamation and Carey Acts, and a withdrawal precludes occupation or entry of land formerly within the Ute Indian Reservation under the preemption laws unless the claim was initiated prior to the approval of this act.

Harrison, In re, 39 L. D. 614, p. 616.

Congress did not intend to permit the right to a surface patent under a nonmineral claim to be defeated by withdrawal or classification of the lands as coal lands where the claim was instituted after such withdrawal, and neither was it intended that the right to surface patent under such claims issued prior to such withdrawal should be defeated by such withdrawal.

Gunn, In re, 39 L. D. 561, p. 564.

See Collins, In re, 39 L. D. 603.

An application to enter land that has been withdrawn as coal land made before the land has been classified should be rejected by the local officers.

Woodhouse, In re, 41 L. D. 145, p. 147.

6. WITHDRAWAL—SUBSEQUENT SELECTIONS—ACT GOVERNING.

Lands selected after the withdrawal order of April 20, 1910, is subject to this act and not to the act of March 3, 1909 (35 Stat. 844), and such a selection will be permitted only by compliance with the proviso of this act.

Culver, In re, 40 L. D. 593, p. 594.

The Executive order of July 7, 1910, relating to South Dakota coal land withdrawal No. 1 was made subject to all the conditions and limitations of this act as well as to the provisions of the act of June 25, 1910 (36 Stat. 847).

Mann, In re, 40 L. D. 440.

The Executive order of July 7, 1910, relating to South Dakota coal land, became effective upon the date of issuance, and an application for a homestead entry made before notice of the withdrawal may be permitted, but it must be made subject to the provisions of this act.

Mann, In re, 40 L. D. 440, p. 441.

The withdrawal order of July 13, 1910, is subject to all the provisions and conditions of these acts, and neither the order nor these statutes will defeat a prior application for lands which are classified under the withdrawal order as being valuable for coal, but such applicant must accept a limited patent under the act of March 3, 1909 (35 Stat. 844), or his application must be rejected.

Moore, In re, 40 L. D. 461, p. 462.

7. SURFACE ENTRY PERMITTED OR WITHDRAWAL ORDERED.

This act authorizes an entry of the surface under nonmineral land laws and a reservation of the coal beneath the surface; or the Land Department can withdraw such lands from nonmineral or agricultural entry, and if it is believed the geological conditions are such that valuable deposits may exist therein, can maintain such withdrawal until time and development determine.

United States v. Kostelak, 207 Fed. 447, p. 453.

8. WITHDRAWALS—SOLDIERS' RIGHTS.

See 35 Stat. 844, p. 812.

While the executive order of withdrawal as to certain lands in the Hailey (Idaho) land district was in force the land was not subject to soldiers' additional location, as such application is not one of the class mentioned in the body of section 1 of this act, though the executive order was subsequently revoked for the reason that the particular land was classified as noncoal in character.

Woodhouse, In re, 41 L. D. 145, p. 146.

See Jenne, In re, 40 L. D. 408.

9. NONMINERAL ENTRY BEFORE WITHDRAWAL—VALIDITY AND PROTECTION.

Under all other mineral land laws and so long as public lands are not withdrawn or are left on the market and open to entry and sale, they are legally enterable under the nonmineral or agricultural land laws, though worthless for agricultural uses, and no mere mineral indications, beliefs, hopes, speculations, presumptions, no belated precaution by withdrawal from market, nor the realities of subsequent development, can lawfully destroy the vested right created by any such nonmineral or agricultural entry.

United States v. Kostelak, 207 Fed. 447, p. 454.

10. CLASSIFICATION—WHAT CONSTITUTES—EFFECT AS TO PRICE.

A statement in the field notes of a survey to the effect that certain lands contain a good quality of lignite coal, without reference to any particular tracts, is not a classification, claim, or report of the coal character of any specific tract.

Conway v. Brooks, 39 L. D. 337, p. 340.

A classification made before the adoption of this act will be accepted as fixing a positive value for coal at the prices named.

McCleary, In re, 42 L. D. 601, p. 603.

11. CLASSIFICATION—EVIDENCES OF MINERAL CHARACTER.

Outcroppings of mineral are more or less evidentiary but by no means conclusive of the mineral character of land, and their value as evidence lessens when found upon other land; and while they indicate possibilities or even probabilities of valuable mineral deposits, yet they are only indications; and lands of great agricultural value and devoted solely to agricultural uses not infrequently contain outcroppings of no value and nonmineral or agricultural lands often adjoin mineral lands and are entered for agricultural purposes; and lands containing no known valuable mineral deposits fall into the nonmineral or agricultural class, however rich in minerals the adjoining

lands may be, and proof of the mineral character of such adjoining lands is not sufficient to establish the mineral character of a particular tract in controversy.

United States v. Kostelak, 207 Fed. 447, p. 452.

See Dahl v. Raunheim, 132 U. S. 260, p. 263.

United States v. Diamond Coal & Coke Co., 191 Fed. 786.

Diamond Coal & Coke Co. v. United States, 233 U. S. 236.

12. CLASSIFICATION—EFFECT ON PRIOR SELECTIONS—RIGHT TO LIMITED PATENT.

While this statute provides for the disposal of lands classified as coal, it also provides that selections initiated in good faith prior to the passage of this act may be perfected and title obtained with a reservation to the United States of the coal in such lands, as well as the right to prospect for, mine, and remove the same.

Utah, In re, 40 L. D. 340, p. 341.

The classification of land as coal land is not a bar to the right of a selector to complete his selection under the provisions of this act by taking a limited patent or the right to a hearing with the view of disproving such classification and establishing his right to an unrestricted patent.

Moses, In re, 40 L. D. 276, p. 277.

Locations initiated in good faith on nonmineral land prior to the passage of this act on lands withdrawn or classified as coal lands are protected by the proviso of section 1 of this act.

Miller, In re, 40 L. D. 33, p. 34.

A nonmineral application initiated in good faith prior to the passage of this act is not avoided by a subsequent withdrawal made under the authority of the act of June 25, 1910 (36 Stat. 847), but the entryman must take a limited patent, as provided by the act of March 3, 1909 (35 Stat. 844).

Miller, In re, 40 L. D. 33, p. 35.

A homestead entry made subsequent to a classification or withdrawal of coal land, but based upon settlement initiated prior to such classification or withdrawal, is subject to the provisions of this act, and the entryman is not entitled to an unrestricted patent under the provisions of the act of March 3, 1909 (35 Stat. 844).

Roots, In re, 42 L. D. 82, p. 84.

See Hindman, In re, 42 L. D. 327.

If initiation of a nonmineral entry prior to the passage of this act upon lands withdrawn or classified as coal lands excepts such entry from the act, then initiation of such an entry prior thereto on lands not withdrawn or classified as coal lands excepts such entrymen also from such restrictions.

McClinton, In re, 40 L. D. 26, p. 27.

See Zuckman, In re, 40 L. D. 25.

Coal lands sold to a noncoal purchaser under the act of April 30, 1912 (37 Stat. 105), must be sold subject to the provisions and reservations of this act, and the final certificate and the patent itself must make the proper exceptions and reservations of the coal to the United States with the right to prospect for, mine, and remove the coal.

Isolated Tracts Coal Lands, In re, 41 L. D. 448, p. 449.

Isolated Tracts Coal Lands, In re, 41 L. D. 501, p. 502.

13. CLASSIFICATION—SUBSEQUENT HEARING TO DISPROVE.

The last proviso of section 3 of this act very clearly states that the right to a hearing with a view to securing a patent without reservation applies to lands which have been

classified as coal land and the hearing provided for is to be had with a view of disproving the classification, and accordingly a hearing can not be had upon any application until after the necessary classification.

Woodhouse, In re, 41 L. D. 145, p. 147.

14. CLASSIFICATION OF INDIAN LANDS—EFFECT.

The provisions of this act are applicable and operative upon the coal lands or those lands withdrawn or classified as coal or otherwise unreserved, situated within the former Southern Ute Indian Reservation.

Glassner, In re, 39 L. D. 462, p. 465.

15. DISPOSAL AFTER CLASSIFICATION.

The Land Department has no authority, since the passage of this act, to dispose of lands classified as coal in any other manner except as therein provided for.

Utah, In re, 40 L. D. 340, p. 341.

16. HOMESTEAD APPLICATION—SUFFICIENCY AND SHOWING.

An application to make homestead entry of lands classified as coal lands under this act must state that the same is made in accordance with and subject to the provisions and reservations thereof; but where an application was made prior to the adoption of the act and was, because of the failure of the proper proof, suspended until after this enactment, the rights of the applicant relate back to the date of the application and the entry is excepted from the operation of the act, and the application is accordingly excepted from this act.

Zuckman, In re, 40 L. D. 25, p. 26.

McClinton, In re, 40 L. D. 26, p. 27.

17. HOMESTEAD PATENT—NO CANCELLATION.

The Government can not maintain a suit to cancel a patent issued under a homestead entry on the ground that the land is coal land where it appeared that the land had once been withdrawn from homestead entry on the ground of its mineral character, but was afterwards restored and later entered and patented under the homestead laws in good faith, and where the entryman had resided thereon and improved and cultivated it for five years before obtaining patent, and no workable coal had been found, developed, or mined except at a point two miles distant, and where adjoining land had been entered as agricultural land, and where no one seemed to value it for coal sufficiently to make further prospects or to seek title to it as coal land, and where the patentee acted in good faith in making his agricultural entry and obtaining patent.

United States v. Kostelak, 207 Fed. 447, p. 450.

Disapproving United States v. Diamond Coal & Coke Co., 191 Fed. 786.

37 STAT. 90, APRIL 23, 1912.

COAL LANDS—ALABAMA—AMENDMENT.

AN ACT Extending the operation of the Act of June 22, 1910 (36 Stat. 583), to coal lands in Alabama.

Be it enacted, etc., That unreserved public lands containing coal deposits in the State of Alabama which are now being withheld from homestead entry under the provisions of the act entitled "An act to exclude the public lands in Alabama from the operations of the laws

relating to mineral lands," approved March 3, 1883 (22 Stat. 487), may be entered under the homestead laws of the United States subject to the provisions, terms, conditions, and limitations prescribed in the act entitled "An act to provide for agricultural entries on coal lands," approved June 22, 1910 (36 Stat. 583).

37 STAT. 106, APRIL 30, 1912.

COAL LANDS—SALE—COAL RESERVED.

AN ACT To supplement the Act of June 22, 1910 (36 Stat. 583), entitled "An act to provide for agricultural entries on coal lands."

Be it enacted, etc., That from and after the passage of this act unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands or are valuable for coal shall, in addition to the classes of entries or filings described in the act of Congress approved June 22, 1910 (36 Stat. 583), entitled "An act to provide for agricultural entries on coal lands," be subject to selection by the several States within whose limits the lands are situate, under grants made by Congress, and to disposition, in the discretion of the Secretary of the Interior, under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in all such lands so selected or sold and of the right to prospect for, mine, and remove the same in accordance with the provisions of said act of June 22, 1910, and such lands shall be subject to all the conditions and limitations of said act.

A. COAL LANDS—AGRICULTURAL ENTRIES.

1. SELECTIONS ON LANDS WITHDRAWN—RESERVATIONS OF COAL.
2. NONCOAL PURCHASER OF SURFACE—RESERVATIONS IN PATENT.
3. SELECTIONS BY STATES—VESTED RIGHTS.
4. APPLICATION FOR PURCHASE—FORM AND SUFFICIENCY.

1. SELECTIONS ON LANDS WITHDRAWN—RESERVATIONS OF COAL.

This act extended the operation of the act of June 22, 1910 (36 Stat. 583), and the selections provided for may be made upon lands which have been withdrawn or classified as coal lands or are valuable for coal, but the patents issued therefor must contain a reservation of the coal and the right to prospect for, mine, and remove the same.

Wyoming, In re, 41 L. D. 19, p. 20.

Selections offered and pending at the date of the passage of this act may, in the absence of intervening adverse rights, be allowed and accepted as of the date of the act.

Wyoming, In re, 41 L. D. 19, p. 21.

2. NONCOAL PURCHASER OF SURFACE—RESERVATIONS IN PATENT.

The noncoal purchaser's consent to the reservation of the coal in the land to the United States is not required, but the cash certificate must state that the "patent to contain provisions, reservations, additions, and limitations of act of June 22, 1910 (36 Stat. 583)" and the patent itself must recite: "Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove the coal from the same upon com-

patents with the conditions and subject to the provisions and limitations of the act of June 22, 1908 (36 Stat. 563).

Revised Treaty on Lands. In re. 41 L. D. 498, p. 499.
 Revised Treaty on Lands. In re. 41 L. D. 501, p. 502.

3. SELECTIONS BY STATES—VESTED RIGHTS.

The tender or filing of a mineral land indemnity selection by a State in lieu of lands sold to it constitutes a mere offer of exchange, but confers no vested right upon the selector and does not prevent the taking or withholding of the land by the United States for public uses or purposes and the right of the State does not vest until acceptance and approval of offer of exchange by the Secretary of the Interior.

Wyoming. In re. 41 L. D. 21, p. 22.

4. APPLICATIONS FOR PURCHASE—FORM AND SUFFICIENCY.

All applications to have coal land offered at public sale must bear on its face the notation of application made in accordance with and subject to the provisions and restrictions of the act of June 22, 1908 (36 Stat. 563).

Revised Treaty on Coal Lands. In re. 41 L. D. 498.
 Revised Treaty on Coal Lands. In re. 41 L. D. 501.

35 STAT. IND. CHAP. 24, MARCH 4, 1909.

COAL RESERVED—PRIVATE PATENT.

AN ACT Authorizing the Secretary of the Interior to issue patent to David Eddington covering homestead entry.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed to cause patent to issue to David Eddington for the northwest quarter of section 20 in township 5 north, range 5 east, Salt Lake meridian, in the Salt Lake land district, Utah, upon proof of compliance with the homestead laws in the matter of residence and cultivation: Provided, That the patent which shall issue to the said David Eddington shall reserve the coal to the Government under the act of March 3, 1909.

V. TRANSPORTATION—EXPORTS—TESTING.

37 STAT. 323, P. 323, AUGUST 23, 1912.

COAL—TRANSPORTATION AND DEPOTS—NAVAL SERVICE.

AN ACT Making appropriations for the naval service for the fiscal year ending June 30, 1913.

Be it enacted, etc., That the following sums be, and they are hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the naval service of the Government for the year ending June 30, 1913, etc.

* * * * *

COAL AND TRANSPORTATION: Coal and other fuel for steamers' and ships' use, and other equipment purposes, including expenses of transportation, storage, and handling the same, and for the general maintenance of naval coaling depots and coaling plants, water for all purposes on board naval vessels, including the expenses of transportation and storage of the same, \$4,000,000.

DEPOTS FOR COAL: To enable the Secretary of the Navy to execute the provisions of section 1552 of the Revised Statutes, authorizing the Secretary of the Navy to establish, at such places as he may deem necessary, suitable depots for coal and other fuel for the supply of steamships of war, \$500,000. That \$75,000 of said sum, or so much thereof as may be necessary, may be used for the survey and investigation by experimental test of coal in Alaska for use on board ships of the United States Navy and for report upon coal and coal fields available for the production of coal for the use of the ships of the United States Navy or any vessel of the United States, and \$345,000 of said sum, or so much thereof as may be necessary, shall be used for the coaling station and fuel station at Pearl Harbor, Hawaii.

37 STAT. 630, MARCH 14, 1912.

COAL EXPORTS.

JOINT RESOLUTION To amend the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States.

Resolved, etc., That the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States, approved April 22, 1898 (30 Stat. 739), be, and hereby is, amended to read as follows:

That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.

SEC. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding \$10,000, or imprisonment not exceeding two years, or both.

COAL TESTING ACTS—APPROPRIATIONS FROM 1904 TO 1910.

23 STAT. 15, p. 22, FEBRUARY 12, 1904.

AN ACT Making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1904, and for prior years, and for other purposes.

Be it enacted, etc. * * *

For analyzing and testing at the Louisiana Purchase Exposition the coals and lignites of the United States in order to determine their fuel values and the most economic method for their utilization for different purposes, under the supervision of the Director of the United States Geological Survey, \$30,000, to be available until expended: Provided, That all testing machinery and all coal and lignites to be tested shall be contributed without charge to the Government.

* * * * *

23 STAT. 294, p. 412, APRIL 27, 1904.

For additional amount for analyzing and testing at the Louisiana Purchase Exposition the coals and lignites of the United States in order to determine their fuel values and the most economic method for their utilization for different purposes, under the supervision of the Director of the United States Geological Survey, \$40,000, to be available until expended.

23 STAT. 602, p. 602, JANUARY 5, 1905.

For the continuation of the analyzing and testing of the coals and lignites of the United States, in order to determine their fuel values and most economic method for their utilization for different purposes, and for the purchase or rental of such additional equipment as is necessary for the proper conduct of the work, under the supervision of the Director of the United States Geological Survey, \$25,000, to be available until expended.

23 STAT. 1154, p. 1157, MARCH 3, 1905.

For the continuation and completion on or before July 1, 1906, of the analyzing and testing of the coals, lignites, and other fuel substances of the United States, in order to determine their fuel values, etc., under the supervision of the Director of the United States Geological Survey, to be immediately available, \$202,000.

24 STAT. 697, p. 722, JUNE 30, 1906.

For the continuation of the analyzing and testing of the coals, lignites, and other mineral fuel substances belonging to the United States, in order to determine their fuel value, etc., under the supervision of the Director of the United States Geological Survey, to be immediately available, \$250,000: Provided, That in examinations, hereby authorized, of fuel materials for the use of the Government

of the United States, or for the purpose of increasing the general efficiency or available supply of the fuel resources in the United States, the Director of the Geological Survey may have the necessary materials collected from any part of the United States where they represent extensive deposits; and it shall be the duty of the Director of the Geological Survey to have examined, without charge, the fuels required for use by the Government of the United States, and to give these examinations preference over other work: Provided further, That in publishing the results of these investigations, the materials examined shall not be credited to any private party or corporation, but shall be collected and described as representing such extensive deposits.

24 STAT. 1294, p. 1235, MARCH 4, 1907.

For the continuation of the analyzing and testing of the coals, lignites, and other mineral fuel substances belonging to the United States, in order to determine their fuel value, etc., under the supervision of the Director of the United States Geological Survey, \$250,000.

25 STAT. 217, p. 249, MAY 27, 1908.

For the continuation of the analyzing and testing of the coals, lignites, and other mineral fuel substances belonging to the United States, in order to determine their fuel value, etc., under the supervision of the Director of the United States Geological Survey, \$250,000: Provided, That in examinations, hereby authorized, of fuel materials for the use of the Government of the United States, or for the purpose of increasing the general efficiency or available supply of the fuel resources in the United States, the Director of the Geological Survey may have the necessary materials collected from any part of the United States where they represent extensive deposits; and it shall be the duty of the Director of the Geological Survey to have examined, without charge, the fuels required for use by the Government of the United States, and to give these examinations preference over other work: Provided further, That in publishing the results of these investigations, the materials examined shall not be credited to any private party or corporation, but shall be collected and described as representing such extensive deposits: And provided further, That all investigations hereunder commenced or undertaken shall be completed and fully reported on prior to the first day of July, 1909, and all investigations and work now in progress under appropriations heretofore made for the purposes mentioned in this paragraph shall also be completed and finally reported on before the close of the fiscal year 1909.

25 STAT. 945, p. 969, MARCH 4, 1909.

For the continuation of the analyzing and testing of coals, lignites, and the other mineral fuel substances belonging to or for the use of the United States, in order to determine their fuel value, etc., under the supervision of the Director of the United States Geological Survey, \$100,000.

For appropriations since 1910, see Bureau of Mines, p. 921.

37 STAT. (PART 2) p. 1248, AUGUST 1, 1912.

OPERATION OF COAL MINE—GEBO MINE—OWL CREEK COAL COMPANY.

JOINT RESOLUTION Authorizing the Secretary of the Interior to permit the continuation of coal-mining operations on certain lands in Wyoming.

Resolved, etc., That the Secretary of the Interior be, and he is hereby, authorized to allow the Owl Creek Coal Company to continue the operation of the mine or mines upon any of the lands embraced in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, until otherwise provided by law, upon such conditions and under such rules and regulations as he may prescribe.

IV. SECTIONS RELATING TO MISCELLANEOUS MINING SUBJECTS.

SECTION 355, REVISED STATUTES.

No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. * * *

A. LEASE OF LANDS—TITLE.

Under this section the Bureau of Mines is not authorized to accept short-term leases for the purpose of erecting even temporary structures thereon for mine rescue work without the opinion of the Attorney General as to the validity of the title.

Mine Rescue Work, In re, 28 Op. Atty. Gen. 463, p. 464.

SECTION 441 REVISED STATUTES.

The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:

First. * * *

Second. The public lands, including mines. * * *

A. AUTHORITY OF SECRETARY OF THE INTERIOR.

B. RULES AND REGULATIONS—REASONABLENESS.

A. AUTHORITY OF SECRETARY OF THE INTERIOR.

See sec. 2325, p. 289; 9 Stat. 395, p. 1038; 10 Stat. 306, p. 300, sec. 9, p. 1206.

The Secretary of the Interior is charged with the supervision of the public business of the United States relating to public lands, including mines.

Old Dominion Copper Min. etc., Co. v. Haverly, 11 Ariz. 241, p. 246.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 48 (dissenting opinion).

The powers of the Secretary of the Interior and the discretion vested in him are not to be exercised by favor or at will, but it is a legal discretion, and he must see that the law is complied with, and it is his duty to dispose of a case in accordance with law and justice and to see that none of the public domain is wasted or is disposed of to a party not entitled to it.

United States v. Lavenson, 206 Fed. 755, p. 761.

See Knight v. United States Land Association, 142 U. S. 161.

United States v. Ballinger, 33 App. Cas. (D. C.) 211.

B. RULES AND REGULATIONS—REASONABLENESS.

The rules adopted under this section with reference to the public lands, including mining lands, must be reasonable.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 43.

See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 309.

SECTION 452, REVISED STATUTES.

The officers, clerks, and employees in the General Land Office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands; and any person who violates this section shall forthwith be removed from his office.

A. DEPUTY MINERAL SURVEYOR—INTEREST IN MINING CLAIM.

A deputy mineral surveyor is an employee of the General Land Office within the meaning of the statute prohibiting officers, clerks, and employes in such office from directly or indirectly becoming interested in any of the public lands.

- Waskey v. Hammer, 223 U. S. 85, p. 93.
 Waskey v. Hammer, 170 Fed. 31, p. 36.
 Lavagnino v. Uhlig, 198 U. S. 443, p. 452.
 Gowdy v. Kismet Gold Min. Co., 24 L. D. 191, p. 193.
 Neill, In re, 24 L. D. 393.
 Floyd v. Montgomery, 26 L. D. 122, p. 136.
 Maxwell, In re, 29 L. D. 76.
 Baltzell, In re, 29 L. D. 333.
 Powell, In re, 39 L. D. 177, p. 179.
 Saunders, In re, 40 L. D. 217.
 Bradford, In re, 36 L. D. 61, p. 63.
 Lavagnino v. Uhlig, 26 Utah 1.
 Contra: Hand v. Cook, 29 Nev. 518.
 Lock Lode, In re, 6 L. D. 105 (overruled).

This section includes mineral surveyors and prohibits them from entering any of the public lands while they are such deputies and from directly or indirectly acquiring any interest in the purchase from the Government, including mining claims.

Lavagnino v. Uhlig, 26 Utah 1, p. 16.

A deputy mineral surveyor is by this section prohibited and is disqualified from becoming a purchaser of any public land though sale is made in a State different from the location or residence of such surveyor.

United States v. Havenor, 209 Fed. 988, p. 990.

A deputy surveyor general who has no interest, real or contingent, in a mining claim at the date of survey made by him or at the date of application for patent for the same is not within the spirit of this section of the statute.

Floyd v. Montgomery, 26 L. D. 122.
 Leffingwell, In re, 30 L. D. 139.

A mineral surveyor, while holding an appointment as such and whose duties as such are at least quasi official in character, has no right to become the owner of capital stock in a corporation which is the record claimant of unpatented placer claims, where he has actively participated in their subdivision into town lots and has also acted as agent of the company in negotiating the sale, as such a position is inconsistent with his duty generally under his appointment.

Saunders, In re, 40 L. D. 217, p. 218.

The supreme court of Nevada holds that a deputy mineral surveyor appointed by the surveyor general is not, like officers, clerks, and employees of the General Land Office, under this section, disqualified from purchasing or otherwise becoming interested in mining claims; but the land department and the United States Supreme Court have since held that a deputy mineral surveyor can not be interested in a mining claim.

- Hand v. Cook, 29 Nev. 518, p. 531.
 See Hastings, etc., R. Co. v. Whitney, 132 U. S. 357, p. 356.
 Grandy v. Bedell, 2 L. D. 314.
 Leffingwell, In re, 3 L. D. 139.
 Lock Lode, In re, 6 L. D. 105.
 McMicken, In re, 10 L. D. 97.
 Muller v. Coleman, 18 L. D. 394.

A claim located by a deputy mineral surveyor is void, and such void claim can not be used as a basis of an adverse claim or to assert any right.

Lockhart v. Farrell, 31 Utah 155, p. 160.

Distinguishing Lavagnino v. Uhlig, 198 U. S. 443.

SECTION 910, REVISED STATUTES.

No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession. (Act February 27, 1865, 13 Stat. 441.)

A. CONSTRUCTION AND EFFECT OF SECTION.

B. ACTIONS FOR POSSESSION—QUESTIONS DETERMINED.

A. CONSTRUCTION AND EFFECT OF SECTION.

The effect of this section is to leave the United States entirely out of consideration in possessory actions for the recovery of mining claims, and neither party can take advantage of the paramount title of the United States either to sustain his own title or to defeat that of his adversary.

Meydenbauer v. Stevens, 78 Fed. 787, p. 793.

The possession contemplated by this section is that the prior location and occupation carry with them the prior and better right.

Meydenbauer v. Stevens, 78 Fed. 787, p. 793.

Under this statute no possessory action for the recovery of any mining title shall be affected by the fact that the paramount title to the land or to the claim in question is in the United States; but every case must be adjudged by the law of possession and this statute permits a person in possession of a mining claim in Alaska under a valid location to quiet the title against an adverse claimant.

Fulkerson v. Chisna Min., etc., Co., 122 Fed. 782, p. 784.

See Pralus v. Pacific Gold, etc., Min. Co., 35 Cal. 30.

Merced Min. Co. v. Fremont, 7 Cal. 317, p. 319.

Boggs v. Merced Min. Co., 14 Cal. 279.

Head v. Fordyce, 17 Cal. 149.

Niagara Consol. Gold Min. Co. v. Bunker Hill Consol. Gold Min. Co., 59 Cal. 612.

Crown Point Gold Min. Co. v. Crismon, 39 Oreg. 364.

Wilson v. Triumph Consol. Min. Co., 19 Utah 66.

Aurora Hill Min. Co. v. Eighty-Five Min. Co., 34 Fed. 515.

The paramount title of the United States can not be affected by possessory actions between claimants for a mining claim under section 2326 R. S., for the reason that such actions are brought to establish the equitable title and are not affected by the act of March 3, 1881 (21 Stat. 505).

Becharts v. Sizer, 12 C. L. O. 166, p. 167.

Alice Placer v. Addie Stevens & Lazy Bill Lodes, 3 Brainard Leg. Prec. 242, p. 246.

Actions between mineral claimants for the possession of a mining claim are not affected by the fact that the United States has the legal title to the land.

South End Min. Co. v. Tinney, 22 Nev. 19, p. 69 (dissenting opinion).

B. ACTIONS FOR POSSESSION—QUESTIONS DETERMINED.

In an action for possession only of a placer mining claim under this section, the parties can not have a judicial determination of the question as to which shall ultimately prevail in a contest for the title, and a court is only authorized to adjudicate

the one question of the plaintiff's lawful right to the exclusive possession of the claim as described in his complaint.

Bevis v. Markland, 130 Fed. 226, p. 227.

Zerres v. Vanina, 134 Fed. 610, p. 613.

Under the rule of this section a plaintiff in an action to recover possession of a placer mining claim can not prevail as against a defendant having prior possession under color of title, and who did not by actual force oust the complainant of his actual possession.

Bevis v. Markland, 130 Fed. 226, p. 227.

All controversies as to mining claims before patent must be determined by the law of possession under this section.

O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 106, p. 109.

Ejectment will lie for a mining claim though the paramount title is in the United States.

Davidson v. Calkins, 92 Fed. 230, p. 232.

United States Min. Co. v. Lawson, 115 Fed. 1005, p. 1009.

In a possessory action contemplated by this section no greater proof of a right to recover can be required in a State court than would be required in a court of the United States, unless made so by a statute of the State.

Harris v. Kellogg, 117 Cal. 484, p. 499.

See *Haws v. Victoria Copper Min. Co.*, 160 U. S. 303, p. 317.

SECTION 1889 REVISED STATUTES.

The legislative assemblies of the several Territories shall not grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association.

SECTION 1889 R. S; AMENDED.

AN ACT To prohibit to passage of local laws in the Territories.

* * * * *

That section 1889 R. S. be amended to read as follows:

"Sec. 1889. The legislative assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, banking, manufacturing, or other industrial pursuits, or the construction and operation of railroads, wagon roads, canals, or irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable, or scientific association." (Act Mar. 3, 1885, 23 Stat. 348.)

* * * * *

SEC. 5. That section 1889 R. S. be amended to read as follows:

"Sec. 1889. The legislative assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate

themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposits (but not of issue) loan, trust, and guarantee associations, and for the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association." (Act of July 30, 1886, 24 Stat. 171, 1 Supp. R. S. 503.)

SECTION 2238, REVISED STATUTES.

Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

* * * * *

Ninth. A fee of \$5 for filing and acting upon each application for patent or adverse claim filed for mineral lands, to be paid by the respective parties.

A. FEE FOR FILING ADVERSE CLAIM.

Registers and receivers are entitled to a fee of \$5 for filing and acting upon an application or adverse claim filed for mineral lands.

Blake v. Toll, 29 L. D. 413, p. 414.

Upon the acceptance of an adverse claim in an application for patent for a mining claim, the register and receiver become chargeable with the fees required by law to be paid, but the time of payment is immaterial as affecting the validity of the filing of the adverse claim.

Blake v. Toll, 29 L. D. 413, p. 415.

NOTE.—Under the rule that a statute once amended becomes wholly inoperative and as though it had never existed, this second amendatory act may be invalid; but no case has been discovered construing this last amendment or passing upon its validity.

SECTION 2258, REVISED STATUTES.

5 STAT. 453-455, SEPTEMBER 4, 1841.

SEC. 2258. The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of pre-emption, to wit:

* * * * *

Fourth. Lands on which are situated any known salines or mines.

This section is repealed by act of March 3, 1891 (26 Stat. 1095, p. 1097).
See annotations, p. 1225.

A. RESERVATIONS OF SALINES AND MINERALS—POLICY.

B. PATENT FOR LANDS CONTAINING KNOWN MINES—EFFECT.

A. RESERVATIONS OF SALINES AND MINERALS—POLICY.

1. SALINES AND SALT SPRINGS.
2. RESERVATION OF MINES AND MINERAL LANDS.
3. KNOWN MINES—WHAT CONSTITUTES.
4. SUBSEQUENT DISCOVERY OF MINERALS—EFFECT.

1. SALINES AND SALT SPRINGS.

It has been the policy of the Government to reserve salt springs and lands from sale and there is no authority for their disposal either as agricultural or mineral lands.

Salt Bluff Placer, In re, 7 L. D. 549, p. 550.

Southwestern Min. Co., In re, 14 L. D. 597.

Geisler, In re, 27 L. D. 515.

Oklahoma v. Brooks, 29 L. D. 533, p. 535.

Hall v. Litchfield, 2 C. L. O. 179.

See Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 667.

It is not the policy of the Government to dispose of its saline lands.

Cole v. Markley, 2 L. D. 847.

Salt Bluff Placer, In re, 7 L. D. 549.

A Government title to any known salines or mines can only be acquired by parties duly qualified who comply with the terms of the act regulating the disposal of mineral lands.

Newell, In re, 3 C. L. O. 50.

The return of a surveyor general that a certain tract of land contains a salt spring withdraws such tract from the operation of the homestead and preemption laws, and a hearing will not be ordered to determine the agricultural character of such tract, where it is not alleged that the surveyor general's return is incorrect as to the location of such salt spring.

DeFord, In re, 2 C. L. O. 131.

This section exempts from entry lands on which are situated any known salines or mines.

Rucker v. Knisley, 14 L. D. 113, p. 114.

Lands on which are situated any known salines or mines are not subject to preemption rights and the right of the Land Department to sell and the right to purchase by preemption entry depends upon the existence of the fact whether or not the land contains known salines or mines.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 331.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 248.

2. RESERVATION OF MINES AND MINERAL LANDS.

By this section mineral lands are expressly reserved from sale, and in all similar cases Congress in express terms excludes mineral lands and does not provide that any clause excepting such mineral lands shall be inserted in the patent.

Cowell v. Lammers, 21 Fed. 200, p. 204.

United States v. Reed, 28 Fed. 482, p. 485.

Northern Pacific R. Co. v. Barden, 46 Fed. 592, p. 603.

Merced Min. Co. v. Fremont, 7 Cal. 317, p. 327.

Blackburn v. United States, 5 Ariz. 162, p. 166.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 15.

Land known to be valuable for its minerals of gold, silver, cinnebar, or copper can not be obtained under preemption or homestead laws.

Largey, In re, 17 C. L. O. 3, p. 4.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 304.

It seems from this and other sections relating to preemption and homestead entries that the clauses from the original acts excepting mineral lands are retained.

Deffebach v. Hawke, 115 U. S. 392, p. 403.

Vacant public lands are open to settlement under the laws regulating that subject when they contain no known salines or mines whether they contain gold, silver, or petroleum or other minerals.

Olive Land & Development Co. v. Olmstead 103 Fed. 568, p. 577.

See Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 41.

This section and section 4 of the act of March 3, 1891 (26 Stat. 1095, p. 1097), are intended to be read and construed in connection with the general reservation of minerals contained in the mining statutes which declares that lands valuable for minerals shall be reserved from sale as provided by law.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.

None of the acts of Congress confer any specific title upon the holder of a mining claim, yet the spirit of the legislation of Congress is to give the assent of the Government to the occupation of mineral lands and the working of mines.

Merced Min. Co., v. Fremont, 7 Cal. 317, p. 327.

No further legislation was necessary in order to save salt springs claimed under the French treaty, as existing statutory reservations made all entries upon any salt springs unlawful.

Hawke v. Deffeback, 4 Dak. 20, p. 34.

See *Morton v. Nebraska*, 88 U. S. (21 Wall.) 660.

3. KNOWN MINES—WHAT CONSTITUTES.

Lands can not be held to be "known mines" unless at the time the rights of the purchaser accrued there was upon the ground an actual and open mine which either had been worked or was capable of being worked.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 327.

To constitute the exemption contemplated by the preemption act under the head of "known mines" there must be upon the land ascertained coal deposits of such an extent and value as to make the land more valuable to be worked as a coal mine under existing conditions than for merely agricultural purposes.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.

See *McLaughlin v. United States*, 107 U. S. 526, p. 528.

If there are no actual "known mines" capable of being profitably worked for coal so as to make the land more valuable for mining coal than for agriculture, the title acquired under the preemption act can not be successfully assailed.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.

The fact that there are surface indications of the existence of veins of coal does not constitute a mine.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.

Where the character of coal lands is not noted on public surveys and plats it then remains to determine how the character of such lands is to be ascertained so that they may be classified as those "on which are situated any known salines or mines."

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 325.

Mullan v. United States, 118 U. S. 271, p. 277.

4. SUBSEQUENT DISCOVERY OF MINERAL—EFFECT.

The exemption of lands from preemption under this statute applies only to lands on which are situated any known salines or mines, and it is unreasonable to seek for possible suggestions of mineral value subsequently discovered in a tract claimed.

Caste, In re, 3 L. D. 169, p. 172.

See *Colorado Coal & Iron Co. v. United States*, 123 U. S. 307, p. 328.

Shaw v. Kellogg, 170 U. S. 312, p. 332.

Riley, In re, 33 L. D. 68, p. 70.

As applied to Alabama coal and iron lands, this section refers only to mines that are known, and can have no reference to mineral value subsequently discovered.

Caste, In re, 3 L. D. 169.

See *United States v. Pratt Coal & Coke Co.*, 18 Fed. 708.

B. PATENT FOR LANDS CONTAINING KNOWN MINES—EFFECT.

Officers of the Land Department have no authority under a preemption entry to issue patent for lands on which are known salines or mines.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 675.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 250.

A patent issued on preemption or homestead entry for land on which there are known salines or mines is void.

United States v. Reed, 28 Fed. 482, p. 486.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 674.

A patent procured for lands other than mineral is regarded as procured by fraud sufficient to annul the patent if the land was known by the grantee to be mineral at the time of issuing the patent.

Northern Pacific R. Co. v. Barden, 46 Fed. 592, p. 619.

United States v. Rose, 24 Fed. 196.

United States v. Iron Silver Min. Co., 24 Fed. 568.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

United States v. Iron Silver Min. Co. 128 U. S. 673.

An agricultural patent gives no title to any known mine, as mineral lands are not subject to preemption or homestead entry.

Bellows & Champion Mine, In re, 4 C. L. O. 17, p. 18.

A patent to a person under the preemption rights does not embrace any known mine, and the patentee will not acquire title to such mine by virtue of his patent.

Newell, In re, 3 C. L. O. 50.

The United States may maintain a suit in equity to cancel a patent issued for any land on which there are any known salines or mines.

United States v. Reed, 28 Fed. 482, p. 486.

McLaughlin v. United States, 107 U. S. 526.

In an action of ejectment based on title acquired under this section against a mineral claimant the defendant may attack the validity of the patent and show that there was upon the land described in the patent a known mine of gold and silver bearing quartz that had been located and worked prior to the date of the application for preemption entry.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 335.

The exemption of known salines or mines under this section prevents the obtaining of any title to such salines or mines as are known to exist at the date of application for patent, and this constitutes one of the exceptions to the conclusiveness of a patent to the public domain because of the want of authority in the land department to pass by preemption patent the title of the Government to such salines or mines.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 335.

Smelting Co. v. Kemp, 104 U. S. 636, p. 647.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 249.

SECTIONS 2275 AND 2276, REVISED STATUTES.

(AS AMENDED.)

(26 Stat. 796, February 28, 1891.)

AN ACT To amend sections 2275 and 2276 R. S. of the United States providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes.

Be it enacted, etc., That sections 2275 and 2276 R. S. of the United States be amended to read as follows:

“SEC. 2275. Where settlements with a view to preemption or homestead have been, or shall hereafter be made, before the survey of

the lands in the field, which are found to have been made on sections 16 or 36, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by preemption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections 16 and 36 are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: Provided, Where any State is entitled to said sections 16 and 36, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory to compensate deficiencies for school purposes, where sections 16 or 36 are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships, in lieu of sections 16 and 36 therein; but such selections may not be made within the boundaries of said reservations: Provided, however, That nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections 16 and 36 in place therein; but nothing in this proviso shall be construed as conferring any right not now existing.

“Sec. 2276. That the lands appropriated by the preceding section shall be selected from any unappropriated, surveyed public lands, not mineral in character, within the State or Territory where such losses or deficiencies of school sections occur; and where the selections are to compensate for deficiencies of school lands in fractional townships, such selections shall be made in accordance with the following principles of adjustment, to wit: For each township, or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one-half, and not more than three-quarters of a township, three-quarters of a section; for a fractional township, containing a greater quantity of land than one-quarter, and not more than one-half of a township, one-half section; and for a fractional township containing a greater quantity of land than one entire section, and not more than one-quarter of a township one-quarter section of land: Provided, That the States or Territories which are, or shall be entitled to both the sixteenth and thirty-sixth sections in place, shall have the right to select double the amounts named, to compensate for deficiencies of school land in fractional townships.” (Act February 28, 1891, 26 Stat. 796.)

A. PURPOSE OF AMENDMENT.

1. INDEMNITY PROVISIONS.
2. SCHOOL SECTIONS MINERAL—INDEMNITY LANDS.

1. INDEMNITY PROVISIONS.

This act extended the indemnity right so as to embrace in addition to those prescribed by the then existing law cases where sections 16 and 36 are mineral and where they are otherwise disposed of by the United States, and the indemnity provisions of this act did more than merely enunciate the existing law as no existing law then permitted indemnity for mineral land or for lands which had been disposed of by the United States.

California, In re, 31 L. D. 335, p. 338.

Mineral lands had previous to this act been excepted by the construction of the mineral laws in connection with the school lands and this act was intended to permit selections of school lands for lands lost in sections 16 and 36 and to permit the State to select lands lying within the limits of a railroad grant which had been forfeited.

Oregon, In re, 18 L. D. 343, p. 348.

California, In re, 23 L. D. 423, p. 428.

See California, In re, 31 L. D. 335.

2. SCHOOL SECTIONS MINERAL—INDEMNITY LANDS.

Under this section, if lands returned by the surveyor general are designated as mineral lands and are school sections, then the State of California is entitled to make the indemnity selection permitted by this statute.

Johnston v. Morris, 72 Fed. 890, p. 896.

This act authorizes Oklahoma to select lieu lands where sections 16 and 36 are mineral lands, but such lieu lands must not be mineral in character.

Oklahoma Territory, In re, 14 L. D. 226.

This act does not alter or amend the provisions of the act of 1889 as to the right of the State to select lands in lieu of mineral lands in sections 16 and 36.

Montana v. Silver Star Min. Co., 23 L. D. 313, p. 316.

The State is entitled under this act to select school-land indemnity for sections 16 and 36 lost to it by reason of their mineral character.

California, In re, 23 L. D. 423, p. 426.

California, In re, 31 L. D. 335, p. 338.

Overruling California, In re, 15 L. D. 10.

Under this statute the State may make indemnity selections whenever any of its school lands are found to be mineral in character.

Rice v. California, 24 L. D. 14, p. 15.

Land may in fact be known to be mineral and still no vein or lode be actually discovered.

Montana v. Silver Star Min. Co., 23 L. D. 313, p. 316.

Where land in controversy is mineral in character an allegation that notice was not posted in the manner required by law is wholly immaterial where the protest is by the State.

Montana v. Silver Star Min. Co., 23 L. D. 313, p. 316.

SECTION 2302, REVISED STATUTES.

No distinction shall be made in the construction or execution of this chapter on account of race or color; nor shall any mineral lands be liable to entry and settlement under its provisions. (Act June 21, 1866, 14 Stat. 66, p. 67.)

- A. SCOPE AND CONSTRUCTION OF SECTION.**
- B. ENTRY AND PURCHASE OF MINERAL LANDS.**
- C. AGRICULTURAL LANDS, p. 844.**

A. SCOPE AND CONSTRUCTION OF SECTION.

The revised statutes relating to preemption and to homestead entries retain the clauses from the original acts excepting mineral lands.

Deffeback v. Hawke, 115 U. S. 392, p. 403.

Davis v. Weibbold, 139 U. S. 507, p. 517.

Bunker Hill, etc., Min., etc., Co. v. United States, 226 U. S. 548, p. 549.

The provision of this section excepting mineral lands from disposal under the homestead law was in force prior to the act of March 31, 1891 (26 Stat. 1095), the same as it has been since; and the amendment of the homestead law by that act does not change the rule as to the mineral character of the land, but the land must be known to be valuable for mineral, and if not of known mineral character at the time of the homestead entry then no subsequent discovery of mineral can affect the title of the settler.

Kern Oil Co. v. Clarke, 30 L. D. 550, p. 562.

See *Kern Oil Co. v. Clarke*, 31 L. D. 288 (on review).

The part of this section providing that no mineral lands shall be liable to entry and settlement under the provisions of the homestead law is not affected by the act of March 3, 1891 (26 Stat. 1095), repealing certain sections of the preemption law.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 46.

While this section does not permit a homestead entry of mineral lands, yet a mere paper location upon which no discovery of oil has been made and upon which the mineral claimant is not prosecuting with diligence the work of making a discovery of oil, will not prevent appropriation by soldiers' additional homestead entry.

Hirshfeld v. Chrisman, 40 L. D. 112, p. 114.

The showing in a nonmineral affidavit of a homesteader that the land does not contain a deposit, among other things, of gravel refers to gravel bearing gold or other metallic substances giving it a peculiar value rather than to the ordinary deposits or beds of gravel.

Zimmerman v. Brunson, 39 L. D. 310, p. 313.

B. ENTRY AND PURCHASE OF MINERAL LANDS.

1. MINERAL LANDS EXCEPTED FROM HOMESTEAD OR PREEMPTION ENTRY.
2. TEST AS TO MINERAL CHARACTER.
3. DETERMINATION OF CHARACTER OF LAND—EVIDENCE.
4. CHARACTER OF LAND ONCE DETERMINED—EFFECT.
5. CHARACTER OF LAND OPEN UNTIL FINAL ENTRY.
6. HEARING MAY BE ORDERED.
7. SUBSEQUENT DISCOVERY OF MINERAL—EFFECT.
8. STONE LANDS—AGRICULTURAL ENTRY.

1. MINERAL LANDS EXCEPTED FROM HOMESTEAD OR PREEMPTION ENTRY.

This section specifically exempts all mineral lands from entry and settlement under the homestead laws.

- Bay v. Oklahoma Southern Gas, etc., Min. Co. 13 Okla. 425, p. 430.
 San Francisco Min. Co., In re, 29 L. D. 397, p. 398.
 Zimmerman v. Brunson, 39 L. D. 310, p. 312.
 Page, In re, 2 C. L. O. 82.
 Searl Placer, In re, 12 C. L. O. 310, p. 311.
 Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 254.
 Jameson v. James, 155 Cal. 275, p. 278.
 United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 304.

The only lands excluded from any but mineral entry are lands either valuable for minerals or those containing valuable mineral deposits.

- United States v. Plowman, 216 U. S. 372, p. 374.

Since the enactment of this statute the homestead law has not contained the clause in regard to known salines or mines, but declares that no mineral lands shall be liable to settlement and entry under its provisions.

- Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.
 Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 11.

An occupant of coal lands can get no benefits under the preemption or homestead laws, for these specifically excepted from their operation lands on which there are known mines.

- Northern Pacific R. Co. v. Collins, 14 L. D. 484, p. 487.

Lands are not subject to preemption or homestead entry on which are situated any known salines or mines.

- Bellows & Champion Mine, In re, 4 C. L. O. 17, p. 18.

The existence of salt springs upon land withdraws it from the operation of the homestead and preemption laws.

- De Ford, In re, 2 C. L. O. 131.

A homestead entry and State selections of lands shown to be mineral in character and therefore subject to disposition only under the mining laws must be canceled and the State selections rejected in favor of a mineral applicant.

- Coleman v. McKenzie, 28 L. D. 348, p. 353.

Where land is shown to be more valuable for mineral than for agricultural purposes, there is no authority for a segregation survey.

- Quigley v. California, 24 L. D. 507.

2. TEST AS TO MINERAL CHARACTER.

The exceptions of mineral lands from preemption and settlement do not exclude all land in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify the expenditure of money or labor for their extraction, and this condition must be known at the date of the grant.

- Davis v. Weibbold, 139 U. S. 507, p. 519.

If the land is worth more for agriculture than it is for mining then it is not mineral land within the meaning of this statute, though it may contain some measure of gold or silver.

- Davis v. Weibbold, 139 U. S. 507, p. 521.
 United States v. Plowman, 216 U. S. 372.
 United States v. Reed, 28 Fed. 482, p. 104.
 United States v. Central Pacific R. Co. 84 Fed. 218, p. 220.

The mineral character of land as a present fact is an essential matter of proof where it is sought to defeat an agricultural entry upon land returned as agricultural.

Berry v. Central Pacific R. Co., 15 L. D. 463, p. 465.

Magalia Gold Min. Co. v. Ferguson, 6 L. D. 218.

Abercrombie, In re, 6 L. D. 393.

Downs, In re, 7 L. D. 71.

Cutting v. Reininghaus, 7 L. D. 265.

Creswell Min. Co. v. Johnson, 8 L. D. 440.

Laney, In re, 9 L. D. 83.

Land known to be valuable chiefly for its mineral contents is not subject to entry under the settlement laws.

Reid v. Lavalley, 26 L. D. 100, p. 102.

It is valuable mineral deposits that give the mineral character which excepts lands from homestead entry, and lands not valuable for their mineral deposits are not excepted from homestead entry.

Jones v. Aztec Land & Cattle Co., 34 L. D. 115, p. 117.

Where land is shown to be more valuable for the production of coal than for agricultural purposes the declaratory statement of an agricultural claimant will be canceled.

Hamilton v. Anderson, 19 L. D. 168, p. 169.

Where land is known to be mineral land chiefly valuable for its mineral contents or more valuable for mining than agricultural purposes it is not subject to entry under the general homestead laws.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 11.

A homestead entry will not be permitted for land known to be coal land and where the coal outcrops thereon stand out boldly and prominently and the entryman undoubtedly knew of the existence of a mine already opened.

Wilson v. Davis, 25 L. D. 514, p. 518.

Nothing short of known mines on the land capable under ordinary circumstances of being worked at a profit as compared with any gain or benefit that may be derived therefrom when entered under the homestead law is sufficient to prevent such entry.

United States v. Reed, 28 Fed. 482, p. 487.

Berry v. Central Pacific R. Co., 15 L. D. 463, p. 464.

Land having no well-defined ledge or lode carrying valuable mineral and which is not shown to contain mineral in any state of such value as to justify expenditure to obtain it or that further expenditure will disclose the presence of valuable mineral of any sort and where the greater part of the land in controversy is shown to have a rich, deep, black soil and is well adapted to the growing of fruits and vegetables and can be easily irrigated is not mineral land within the exception of this section of the statute.

Reid v. Lavalley, 26 L. D. 100, p. 103.

The title acquired to lands under this preemption act can not be successfully assailed unless it is shown that there were known mines capable of being profitably worked so as to make the land more valuable for mining than for agriculture at the time of the original entry.

Spratt v. Edwards, 15 L. D. 290, p. 292.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

Sullivan v. Iron Silver Min. Co., 143 U. S. 431.

Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394.

Davis v. Weibbold, 139 U. S. 507.

In order to defeat a preemption entry because of the mineral character of the land it must be shown that the mineral was known to exist at the date of the entry.

Harnish v. Wallace, 13 L. D. 108.

See Dickinson v. Capen, 14 L. D. 426, p. 427.

If subsequent development demonstrates that the mineral formerly discovered has disappeared, or that the mine has been worked out, or that it was worthless and unprofitable to work as a mining claim and abandoned as such, this is not in any sense a readjudication of the former issue.

Dargin v. Koch, 20 L. D. 384, p. 387.

Lands chiefly valuable for phosphate deposits are mineral land and not subject to entry under the homestead laws.

Gary v. Todd, 18 L. D. 58.

Pacific Coast Marble Co. v. Northern Pacific R. Co., 25 L. D. 233, p. 241.

See *Florida Central & Peninsular R. Co.*, In re, 26 L. D. 600, p. 601.

The presence of a deposit of alumina does not impress such a mineral character upon land as will reserve it as mineral and exempt it from settlement and entry under the homestead laws, as alumina is not such a mineral as contemplated by Congress that would exclude the land from agricultural entry.

Jordan v. Idaho Aluminum Min., etc., Co., 20 L. D. 500, p. 501.

3. DETERMINATION OF CHARACTER OF LAND—EVIDENCE.

Under this section, the Land Department must determine the actual character of the land in dispute, though represented by a claimant to be mineral.

Reid v. Lavallee, 26 L. D. 100, p. 102.

Ordinarily a mere proximity of a mine does not per se overcome the regular agricultural return of an adjacent tract of land; yet, if a doubt is raised as to the character of the land, a hearing will be ordered, as it is not the policy of the Government to patent mineral land under an agricultural claim.

Magalia Gold Min. Co. v. Ferguson, 3 L. D. 234.

Magalia Gold Min. Co. v. Ferguson, 6 L. D. 218.

Where land has been mined over and abandoned there is no longer a strong prima facie case in favor of its still being mineral land within the meaning of the statute, and proof that land had been so mined and exhausted of its minerals and abandoned is sufficient rebuttal of its previous mineral character.

Thomas v. Thomassen, 16 L. D. 52, p. 54.

See *Cutting v. Reininghaus*, 7 L. D. 265.

The fact that land was taken possession of as placer land and claimed under placer location gives the locator no right thereto as against a homestead entry if in fact the land is not mineral in character.

Montgomery v. Gilbert, 26 L. D. 216.

An entry under this section will not be declared fraudulent on the ground that the land is mineral in character upon general allegations to the contrary which refer to no particular claim or tract.

Wyman, In re, 6 C. L. O. 135.

The occupation of land by transient miners with a temporary mining camp composed of a few small log houses used for living in, markets, merchandise, and an assay office, without any effort or purpose to explore or develop the land for minerals, does not reserve such land from homestead entry.

Raymond v. Redifer, 21 L. D. 228, p. 231.

4. CHARACTER OF LAND ONCE DETERMINED—EFFECT.

Where the mineral character of land is put in issue and its character in that respect determined, and it has been determined to be nonmineral in character, it is an adjudication and the question becomes res adjudicata.

Rea v. Stephenson, 15 L. D. 37, p. 38.

The adverse possession and occupation of land as a mineral claim will not defeat a settlement claim under the preemption or homestead laws after the land has been held to be agricultural land.

McIntyre v. Yokum, 16 L. D. 62, p. 63.

A finding that land is more valuable for agricultural purposes than for mineral is conclusive on the proposition up to the close of the inquiry and precludes subsequent consideration of any evidence on that point prior to the close of such inquiry.

Etling v. Potter, 17 L. D. 424.

Leach v. Potter, 24 L. D. 573, p. 574.

See Stinchfield v. Pierce, 19 L. D. 12.

Dargin v. Koch, 20 L. D. 384.

5. CHARACTER OF LAND OPEN UNTIL FINAL ENTRY.

Until the entryman has made final proof, paid the land office charges and obtained his final receipt, the character of the land is open to inquiry, and if it can be shown by an adverse claimant that it is more valuable for mineral than for agricultural purposes, the homestead entry may be canceled and a mineral entry allowed.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 434.

See Rea v. Stephenson, 15 L. D. 37.

Jones v. Driver, 15 L. D. 514.

An agricultural entry may be canceled on proof that the land is valuable for mineral purposes.

Bunker Hill, etc., Min., etc., Co. v. United States, 226 U. S. 548, p. 549.

An original homestead entry can not be properly called a sale until it is completed in accordance with law, and before the issue of the final certificate it is open to attack on the ground that the land embraced therein is mineral in character.

Gary v. Todd, 18 L. D. 58, p. 59.

See Dickinson v. Capen, 14 L. D. 426.

Jones v. Driver, 15 L. D. 514.

6. HEARING MAY BE ORDERED.

Where a doubt exists as to whether a tract of land is more valuable for mineral than for agricultural purposes, a hearing will be awarded to determine the character of the land, rather than permit an entry by the agricultural claimant.

Magallia Gold Min. Co. v. Ferguson, 3 L. D. 234.

Magallia Gold Min. Co. v. Ferguson, 6 L. D. 218.

7. SUBSEQUENT DISCOVERY OF MINERAL—EFFECT.

The discovery of mineral, however valuable, after the due issuance of final homestead certificate will not affect in any manner the right and title of the homestead claimant.

Dufrene v. Mace, 30 L. D. 216, p. 219.

A discovery of coal after purchase of land and the issuance of a final certificate will not defeat the issuance of patent, though the lands are shown to be more valuable for coal than for agricultural purposes, as the conditions existing at the date of final entry determine the character and classification of the land.

Jones v. Driver, 15 L. D. 514.

Arthur v. Earle, 21 L. D. 92, p. 93.

Chormicle v. Hiller, 26 L. D. 9, p. 14.

A segregation of a homestead entry may be ordered where there is a subsequent discovery of mineral though the homestead is rendered noncontiguous by the segregation.

Jenkins v. Seibel, 18 L. D. 141, p. 143.

See Lannon v. Pinkston, 9 L. D. 143.

The subsequent discovery of coal or other mineral made on land after the final entry does not affect the right of entry under the homestead law.

Rea v. Stephenson, 15 L. D. 37, p. 38.

Jacks, In re, 7 L. D. 570.

Harnish v. Wallace, 13 L. D. 108.

See Colorado Coal Co. v. United States, 123 U. S. 307, p. 328.

Shaw v. Kellogg, 170 U. S. 312, p. 332.

Riley, In re, 33 L. D. 68, p. 70.

8. STONE LANDS—AGRICULTURAL ENTRY.

A homestead entry may be made of land containing stone, as it has an agricultural value also.

Jamison v. Hayden, 15 L. D. 276, p. 277.

See Keller v. Bullington, 11 L. D. 140.

The existence of stone or ledges of red sandstone does not except the land from agricultural entry even though it is more valuable for quarrying than for agricultural purposes.

Hayden v. Jamison, 16 L. D. 537 (review).

Conlin v. Kelly, 12 L. D. 1.

McGlenn v. Wienbroer, 15 L. D. 370.

Clark v. Ervin, 16 L. D. 122.

South Dakota v. Vermont Stone Co., 16 L. D. 263.

Land containing ordinary building stone is not excluded from agricultural entry though more valuable for such stone than for agricultural purposes.

Hayden v. Jamison, 16 L. D. 537.

Hayden v. Jamison, 24 L. D. 403.

The mere fact that land is more valuable for timber or stone therein does not exclude it from appropriation under lieu selections or homestead entry if not of a mineral character.

Jones v. Aztec Land & Cattle Co., 34 L. D. 115, p. 117.

The fact that a tract of land was entered under the homestead law without knowledge of the existence of mineral or stone and that subsequently the homesteader discovered and opened a stone quarry and united with others in locating 160 acres of land embraced in his entry as a placer claim does not constitute an abandonment of his homestead claim.

Thorne v. Kinsey, 18 L. D. 416, p. 417.

C. AGRICULTURAL LANDS.

1. NOT SUBJECT TO MINERAL ENTRY.
2. CONTEST BETWEEN ENTRYMEN—BURDEN OF PROOF.
3. PREFERENCE RIGHT OF ENTRY.
4. NONMINERAL AFFIDAVIT.

1. NOT SUBJECT TO MINERAL ENTRY.

Where land is agricultural in character it is not subject to location under the mining laws and where it is mineral in character no claim thereto can be acquired under the homestead or other agricultural land laws.

Coleman v. McKenzie, 29 L. D. 359, p. 360.

Nonmineral lands are subject to agricultural entry and if an entryman seeks to obtain title to a mineral tract, it is the duty of miners and of others who may know its true character to appear and submit proof of such fact, and the purpose of the public notice

is to advise all parties of the application and furnish opportunity to defeat any fraudulent entry.

Wyman, *In re*, 6 C. L. O. 135.

Where due compliance with the homestead law in all its particulars is clearly and unequivocally shown, and inquiry as to the mineral character of the land will neither be ordered nor permitted because of a defective notice of final proof on the homestead entry.

Dufrene v. Mace, 30 L. D. 216, p. 219.

A homestead claimant may have canceled a prior coal-land entry as to the conflicting legal subdivisions which are not valuable for coal.

Scott v. Sheldon, 15 L. D. 361, p. 362.

McWilliams v. Green River Coal Association, 23 L. D. 127.

Where land is of little value for agricultural purposes and is essential to the proper working of deep gravel mines, it should be withheld from sale under laws regulating the disposal of agricultural lands.

Crouch, *In re*, 2 C. L. O. 146.

Where a nonmineral patent was issued and duly recorded and no rights asserted by a mineral claimant against the title and the mineral locators can not be found, alleged locations of a mineral claim without any assertion of right thereunder for a long period of years may be disregarded as no longer constituting an assertion of right adverse to the nonmineral title.

Blair, *In re*, 33 L. D. 72, p. 74.

Where no facts as to the mineral character of land are shown to exist a qualified pre-emptioner on compliance with the preemption or homestead laws is entitled to the land.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 11.

2. CONTEST BETWEEN ENTRYMEN—BURDEN OF PROOF.

In order to defeat a final homestead entry it must be shown that mineral was known to exist at the time of the entry.

Gary v. Todd, 18 L. D. 58, p. 59.

See Harnish v. Wallace, 13 L. D. 108.

Jones v. Driver, 15 L. D. 514.

Where land is claimed as a homestead it may be shown by subsequent development to be more valuable for mineral than for agricultural purposes, but the testimony must be clear and unmistakable and sufficient to carry conviction beyond possible doubt.

Stinchfield v. Pierce, 19 L. D. 12, p. 14.

See Dargin v. Koch, 20 L. D. 384, p. 387.

McCharles v. Roberts, 20 L. D. 564, p. 566.

Searle Placer, *In re*, 11 L. D. 441.

Where an agricultural entry has been made on the ground of known mineral character of the land at date of entry, the burden of proof rests with the protestant who attacks such entry, irrespective of the fact that the land has been returned as mineral after the allowance of such agricultural entry.

Aspen Consolidated Min. Co. v. Williams, 23 L. D. 34, p. 39.

The burden of proof is on an agricultural claimant seeking a patent for land returned as mineral to show its nonmineral character.

McGurk v. Waters, 10 C. L. O. 87.

Where an agricultural claimant is seeking to have a former judgment holding the land mineral reversed he must allege and prove an abandonment or forfeiture of the mining claim to entitle him to a new entry.

McCharles v. Roberts, 20 L. D. 564, p. 567.

See Coleman v. McKenzie, 28 L. D. 348, p. 353.

The possession of land under a mining claim is not such occupation and settlement as will defeat an adverse claimant under the homestead or preemption laws because settlement was made prior to the cancellation of the mineral entry.

McIntyre v. Yokum, 18 L. D. 62, p. 63.

See Bullard v. Flanagan, 11 L. D. 515.

A homestead entryman must object to a mineral application by initiating a contest against the mineral claimant.

Piru Oil Co., In re, 18 L. D. 117, p. 120.

See Houghton v. McDermott, 15 L. D. 509.

Anderson v. Amador & Sacramento Canal Co., 10 L. D. 572.

A homestead entryman must take notice of a valid subsisting mining location on the land and of which a proper record has been made and such homestead entry will not be permitted where the tracts claimed for the homestead are made noncontiguous by reason of the mining location.

Jenkins v. Seibel, 18 L. D. 141, p. 143.

Aside from the question as to whether the burden of proving the land valueless for coal was on the agricultural claimant, a review will not be permitted on the ground that the former decision was against the evidence.

Dickinson v. Capen, 14 L. D. 426, p. 427.

Where a mineral claimant fails to make proper and timely objection to an agricultural entry the Land Department must assume that none exists.

Caribou Lode, In re, 24 L. D. 488, p. 489.

3. PREFERENCE RIGHT OF ENTRY.

A person who brings about a cancellation of a mineral application is entitled to a preference right arising from such cancellation.

Rinda v. Northern Pacific R. Co., 19 L. D. 184, p. 185.

See Dornen v. Vaughn, 16 L. D. 8.

Majors v. Rinda, 24 L. D. 277, p. 278.

4. NONMINERAL AFFIDAVIT.

The filing of a nonmineral affidavit by a homesteader is not a statutory requirement, but a departmental regulation based upon the latter clause of this section which provides that mineral lands shall not be liable to entry and settlement under the homestead laws.

Corbin v. Dorman, 25 L. D. 471, p. 472.

The nonmineral affidavit of an applicant for entry may be made by the attorney of the applicant.

Mendenhall v. Howell, 14 L. D. 461, p. 463.

A nonmineral affidavit can be made only upon personal knowledge and can not be made on information.

Hobbs, In re, 1 Copp's Pub. Land Laws 369.

A person who makes a nonmineral affidavit without an intimate personal knowledge of the land swears falsely, and an entry based upon such false affidavit is fraudulent.

Hobbs, In re, 1 Copp's Pub. Land Laws 369.

The affidavit of a mineral applicant is sufficient as the basis of an inquiry as to the character of the land, and is a protest against its entry as a homestead.

Jamison v. Hayden, 15 L. D. 276, p. 277.

If it appears that the person making the affidavit required by the regulations is as a matter of fact unacquainted with the character of the land, the value of the affidavit

as evidence of the nonmineral character of the land is destroyed, but the entry is not rendered illegal in the absence of an allegation that the land is in fact mineral in character.

Corbin v. Dorman, 25 L. D. 471, p. 472.

An application for a homestead entry without proper and usual nonmineral affidavit establishes prima facie the nonmineral character of the land covered by such homestead entry.

Elda Min., etc., Co., In re, 29 L. D. 279, p. 280.

An affidavit of contest which states that the land in controversy is more valuable for the timber or stone contained thereon or therein than for agricultural purposes is not a sufficient charge that the land is mineral in character and forms no basis for a protest against a homestead entry.

Jones v. Aztec Land & Cattle Co., 34 L. D. 115, p. 117.

An application for entry should not be held for 10 days in which to permit the applicant to file the requisite nonmineral affidavit, but such delay is wholly immaterial in the absence of any intervening application or adverse claim.

Mendenhall v. Howell, 14 L. D. 461, p. 462.

SECTION 2362, REVISED STATUTES.

The Secretary of the Interior is authorized, upon proof being made, to his satisfaction that any tract of land has been erroneously sold by the United States, so that from any cause the sale can not be confirmed, to repay to the purchaser, or to his legal representatives or assignees, the sum of money which was paid therefor, out of any money in the Treasury not otherwise appropriated.

See 21 Stat. 267, p. 1219.

A. ENTRY ERRONEOUSLY ALLOWED—MEANING.

B. REPAYMENT.

A. ENTRY ERRONEOUSLY ALLOWED—MEANING.

A mineral entry is not erroneously allowed within the meaning of this statute if it is obtained by false testimony, and in such case repayment will not be ordered.

Latham, In re, 20 L. D. 379, p. 380.

B. REPAYMENT.

1. WHEN ORDERED.

2. NOT ORDERED.

1. WHEN ORDERED.

See 21 Stat. 267, p. 1219.

Repayment of the deposits for a mineral entry may be ordered under this statute where it is shown that any land has been erroneously sold by the United States so that the sale can not be confirmed.

Latham, In re, 20 L. D. 379, p. 380.

Where a homestead entry was erroneously allowed of lands valuable chiefly for stone, the purchase money may be refunded on cancellation of the entry where the entryman acted in good faith and where the entry was made at the time when the department held that lands valuable for ordinary building stone could not be entered under the mining law.

Piatt, In re, 33 L. D. 270.

2. NOT ORDERED.

A repayment will not be ordered where the entryman knew that the entry for a mineral claim was made for the benefit of a foreign corporation, as such an entry is illegal.

Dargin v. Koch, 20 L. D. 384, p. 387.

Where an entry of coal lands has been procured upon false testimony repayment of the purchase money can not be claimed on the cancellation of the entry, and an entry is not erroneously allowed within the contemplation of the repayment statute where the alleged defect does not necessarily defeat the confirmation of the entry.

Anthracite Mesa Coal Min. Co., In re, 28 L. D. 551, p. 552.

Where a mineral entry is canceled for failure to supply the supplemental proof required, the repayment of the purchase money will not be allowed.

Reed, In re, 29 L. D. 188, p. 189.

The assignee of a coal-land claim made prior to the completion of the assignor's entry does not occupy the position of an assignee within the meaning of the repayment-statute.

Davis, In re, 33 L. D. 313, p. 315.

The repayment of a mining survey deposit is not within the purview of this section.

Golden Empire Min. Co., In re, 36 L. D. 561, p. 563.

SECTION 2369, REVISED STATUTES.

In every case of the purchaser of public lands, at private sales, having entered at the land office, a tract different from that he intended to purchase, and being desirous of having the error in his entry corrected, he shall make his application for that purpose to the register of the land office; and if it appears from testimony satisfactory to the register and receiver, that an error in the entry has been made, and that the same was occasioned by original incorrect marks made by the surveyor, or by the obliteration or change of the original marks and numbers at corners of the tract of land; or that it has in any otherwise arisen from mistake or error of the surveyor, or officers of the land office, the register and receiver shall report the case, with the testimony, and their opinion thereon, to the Secretary of the Interior, who is authorized to direct that the purchaser is at liberty to withdraw the entry so erroneously made, and that the moneys which have been paid shall be applied in the purchase of other lands in the same district, or credited in the payment for other lands which have been purchased at the same office.

A. PATENT—CORRECTING MISTAKE.

The provisions of this section are extended to all cases where patent has issued and a mistake has subsequently been discovered in the description of the land intended to have been entered, where the mistake was occasioned by any causes mentioned in this section.

Gill, In re, 8 L. D. 303, p. 305.

SECTION 2370, REVISED STATUTES.

The provisions of the preceding section are declared to extend to all cases where patents have issued or may hereafter issue; upon condition, however, that the party concerned surrenders his patent to the Commissioner of the General Land Office, with a relinquishment of title thereon executed in a form to be prescribed by the Secretary of the Interior.

A. CORRECTING MISTAKE IN PATENT—CONDITIONS.

A correction of a mistake in a coal-land entry, as contemplated in the preceding section, can not be made unless the entryman or the patentee reconveys to the Government the land patented by mistake, and unless such reconveyance is accompanied by satisfactory proof of nonalienation by him.

Gill, In re, 8 L. D. 303, p. 303.

SECTION 2395, REVISED STATUTES.

* * * * *

Seventh. Every surveyor shall note in his field book the true situations of all mines, salt licks, salt springs, and mill sites which come to his knowledge; all watercourses over which line he runs may pass; and also the quality of the lands.

* * * * *

See 2 Stat. 73, p. 1196.

A. SURVEYS.

B. SURVEYOR GENERAL'S DUTY, p. 850.

C. DEPUTY SURVEYOR, p. 851.

A. SURVEYS.

1. NOTATION AS TO MINERAL LANDS, SALINES, ETC.—EFFECT.
2. SPANISH AND MEXICAN SURVEYS—FORMS.
3. MINERAL CLAIM CONNECTED WITH SURVEY OR MONUMENT.

1. NOTATION AS TO MINERAL LANDS, SALINES, ETC.—EFFECT.

Mineral lands are reserved by the same laws and in the same terms as saline lands, and in the same language it is provided that the field notes and plats shall record their situations, but these notations do not of themselves create reservations of the lands so marked, and the return of a deputy surveyor, while entitled to respect as coming from a sworn officer, is not conclusive when disputed, and the matter must be investigated as a question of fact.

Cole v. Markley, 2 L. D. 847, p. 850.

Scogin v. Culver, Sickels' Min. L. & D. 450.

Linden v. Gray, 3 C. L. O. 181.

2. SPANISH AND MEXICAN SURVEYS—FORMS.

Under the laws of Spain and Mexico the surveys of the public lands were made in squares, noting streams of water and lakes, pools, mountains, mineral regions, salt regions, climate of the locality, the character of the soil, and everything else which might give an idea of the improvement of which they might be susceptible, and the statutes of the United States contain substantially the same provisions.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 304.

3. MINERAL CLAIM CONNECTED WITH SURVEY OR MONUMENT.

The lines of a mineral claim should be run connecting the claim either with the corner of a surveyed township or a United States mineral monument within two miles Hauck, In re, 10 L. D. 391.

In the survey of township lines each distance of a mile within the township corners must be distinctly marked, and this establishes all section corners falling upon the

township line; and a connecting line from a mineral claim therein to such marks on a township line is sufficient, though the township is not certified.

Hauck, In re, 10 L. D. 391.

B. SURVEYOR GENERAL'S DUTY.

1. OBJECT OF STATUTE.
2. DESCRIPTIVE NOTES—PLATS—SITUATION OF MINES, ETC.
3. FAILURE TO DESIGNATE LANDS AS MINERAL.
4. LANDS RETURNED AS AGRICULTURAL—EFFECT.
5. TITLE ACQUIRED AFTER RECORD OF FIELD NOTES.
6. REPORT AS EVIDENCE.

1. OBJECT OF STATUTE.

The purpose of this section and of the act of 1796 was to obtain public and official information of the saline lands with a view to preventing entry until the facts are finally determined, and the entries required are only prima facie evidence, subject to be rebutted by satisfactory proof of the real character of the land.

Cole v. Markley, 2 L. D. 847, p. 849.

The object of this statute was to enable the officers in each instance to determine whether or not the lands were patentable and to show that the mineral lands at the date of the survey were not authorized to be surveyed by running the section lines, and the Government has thus provided means to enable the Land Office to determine the character of the lands, and, as mineral lands are excepted, this necessarily involves the duty to determine whether lands for which patents are sought are mineral or not.

Cowell v. Lammers, 21 Fed. 200, p. 205.

2. DESCRIPTIVE NOTES—PLATS—SITUATION OF MINES, ETC.

The descriptive notes required by this section must be incorporated in the plat by the surveyor general, showing the true situation of all mines, salt licks, salt springs, and mill sites known to the surveyor.

Circular, In re, 1 L. D. 685, p. 686.

3. FAILURE TO DESIGNATE LANDS AS MINERAL.

The failure of the surveyor to designate lands upon the field notes and plats as mineral is equivalent to classifying them as nonmineral, and it is not customary to specifically designate on such notes and plats the agricultural lands.

Savage v. Boynton, 12 L. D. 612.

Bedal v. St. Paul, etc., R. Co., 29 L. D. 254.

4. LANDS RETURNED AS AGRICULTURAL—EFFECT.

Where lands are returned by the surveyor general as agricultural in character they so continue until their mineral character is shown, and the burden of proof is on the mineral claimant to show their mineral character as a present fact, and that the mineral value thereof is greater than its agricultural value.

United States v. Central Pac. R. Co., 93 Fed. 871, p. 874.

Dughi v. Harkins, 2 L. D. 721.

5. TITLE ACQUIRED AFTER RECORD OF FIELD NOTES.

The failure of a surveyor to record his field notes of the survey of saline lands can not affect the validity of the title of a claimant, as against one who acquired title after such field notes were recorded.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 590.
See *Justice Min. Co. v. Barclay*, 82 Fed. 554.

6. REPORT AS EVIDENCE.

Too much attention and too great effect has been given to the reports of surveyors when otherwise admissible as evidence as to the matters required by this section.

Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 21.

C. DEPUTY SURVEYOR.**1. DUTY TO NOTE MINES, SALINES, ETC.****2. CERTIFICATE AS TO MINERAL CHARACTER OF LAND—EFFECT.****1. DUTY TO NOTE MINES, SALINES, ETC.**

The deputy surveyor is required to note in his field books the true situation of all mines, salt rocks, salt streams, as well as other facts coming within his knowledge.

Johnston v. Morris, 72 Fed. 890, p. 897.

The United States deputy surveyor must note the true situation of all mines, salt licks, salt springs, and mill sites, as well as the quality of the lands, and he must incorporate in the plat such descriptive notes.

Gerhauser, In re, 7 L. D. 390.

2. CERTIFICATE AS TO MINERAL CHARACTER OF LAND—EFFECT.

Where lands surveyed by a deputy surveyor are certified by him to be mineral, and his survey is approved by the surveyor general of the General Land Office, this record is presumptively correct and determines the character of such land as mineral.

Johnston v. Morris, 72 Fed. 890, p. 897.

United States surveyors, in making surveys, are required by this section to note the location of all mines, and the surveyor general must make proper return thereof.

Townsite of Deadwood, In re, 8 C. L. O. 153, p. 154.

Deputy United States surveyors are required, among other things, to know the true situation of all mines, as well as the quality of the lands, and such descriptive notes must be incorporated in the plat by the surveyor general.

Gerhauser, In re, 7 L. D. 390.

SECTION 2401, REVISED STATUTES (AS AMENDED).

28 Stat. 423, August 20, 1894.

AN ACT To amend section 2401.

Be it enacted, etc., That section 2401 R. S. is hereby amended so as to read as follows:

"SEC. 2401. When the settlers in any township not mineral or reserved by the Government, or persons and associations lawfully possessed of coal lands and otherwise qualified to make entry thereof,

or when the owners or grantees of public lands of the United States, under any law thereof, desire a survey made of the same under the authority of the surveyor general and shall file an application therefor in writing, and shall deposit in a proper United States depository to the credit of the United States a sum sufficient to pay for such survey, together with all expenditures incident thereto, without cost or claim for indemnity on the United States, it shall be lawful for the surveyor general, under such instructions as may be given him by the Commissioner of the General Land Office, and in accordance with law, to survey such township or such public lands owned by said grantees of the Government, and make return therefor to the general and proper local land office: Provided, That no application shall be granted unless the township so proposed to be surveyed is within the range of the regular progress of the public surveys embraced by existing standard lines or bases for township and subdivisional surveys."

A. EFFECT OF AMENDATORY ACT.

B. SURVEY OF PUBLIC LANDS.

A. EFFECT OF AMENDATORY ACT.

It appears from this amendatory act that Congress has acknowledged the existence of a claim or right to and the lawful possession of coal lands the equivalent possibly of a preference right of entry in essence, but which is not in fact a present existent right to make immediate entry.

Carthage Fuel Co., In re, 41 L. D. 21, p. 27.

B. SURVEY OF PUBLIC LANDS.

1. SURVEY OF COAL LANDS.

This amendatory section permits qualified persons and associations lawfully possessed of coal land to make entry thereof and to apply for the survey of unsurveyed public lands under the deposit system.

Carthage Fuel Co., In re, 41 L. D. 21, p. 27.

This section in express terms provides that mineral land shall not be surveyed, and this applies to coal lands, and therefore a certificate of deposit can not be received in payment of the survey of such lands.

Sprowl, In re, Copp's Min. Lands 342.

The prohibition of this section against surveying townships of mineral lands, under the deposit system, applies to those only which are known to be mineral to the officers charged with the public survey at the time the contract for surveying is made and not to those discovered to be mineral in making the survey or at some subsequent date.

California v. Bodie & Mono Min. Co., 6 C. L. O. 175.

SECTION 2402, REVISED STATUTES.

The deposit of money in a proper United States depository, under the provisions of the preceding section, shall be deemed an appropriation of the sums so deposited for the objects contemplated by that section, and the Secretary of the Treasury is authorized to cause the sums so deposited to be placed to the credit of the proper appropriations for the surveying service; but any excesses in such sums over and above the actual cost of the surveys, comprising all expenses incident thereto, for which they were severally deposited, shall be repaid to the depositors, respectively.

A. DEPOSIT FOR SURVEY—REFUNDING.

Under this section the unearned portion of the money deposited for a mining survey shall be refunded to the depositor.

Golden Empire Min. Co., In re, 36 L. D. 561, p. 563.
Overruling Dunphy, In re, 8 L. D. 102.

SECTION 2403, REVISED STATUTES (AS AMENDED).

28 Stat. 423, August 20, 1894.

AN ACT To amend section 2403.

Be it enacted, etc. * * *

SEC. 2. That section 2403 R. S. as heretofore amended is hereby amended so as to read as follows:

“SEC. 2403. Where settlers or owners or grantees of public lands make deposits in accordance with the provisions of section 2401, as hereby amended, certificates shall be issued for such deposits which may be used by settlers in part payment for the lands settled upon by them, the survey of which is paid for out of such deposits, or said certificates may be assigned by indorsement and may be received by the Government in payment for any public lands of the United States in the States where the surveys were made, entered or to be entered under the laws thereof.”

A. PAYMENT FOR COAL LANDS—CERTIFICATE OF DEPOSIT.

This section does not authorize certificates of deposit to be received in payment for coal lands.

Sprowl, In re, Copp's Min. Lands 342.

SECTION 2406, REVISED STATUTES.

There shall be no further geological survey by the Government, unless hereafter authorized by law. The public surveys shall extend over all mineral lands; and all subdividing of surveyed lands into lots less than 160 acres may be done by county and local surveyors at the expense of claimants; but nothing in this section contained shall require the survey of waste or useless lands.

A. PUBLIC SURVEYS—MINERAL LANDS.

The United States statute provides that the public surveys shall extend over all mineral lands.

Johnston v. Morris, 72 Fed. 890, p. 897.

SECTION 2449, REVISED STATUTES.

Where lands have been or may hereafter be granted by any law of Congress to any one of the several States and Territories, and where such law does not convey the fee simple title of the land, or require patents to be issued therefor, the list of such lands which have been or may hereafter be certified by the Commissioner of the General Land Office, under the seal of his office, either as originals or copies of the originals or records shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contem-

plated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.

A. CERTIFIED LIST—EFFECT AS PATENT.

B. SELECTION OF MINERAL LANDS—TITLE.

A. CERTIFIED LIST—EFFECT AS PATENT.

A certified list issued under and pursuant to this statute is of the same effect as a patent.

Garrard v. Silver Peak Mines, 94 Fed. 983, p. 984.

See Fraisher v. O'Connor, 115 U. S. 102.

Chandler v. Calumet & Hecla Min. Co., 149 U. S. 79.

B. SELECTION OF MINERAL LANDS—TITLE.

Under this section the Commissioner can not select and include known mineral lands and thereby convey such lands to the State, and a purchaser of such lands from the State acquires no title as against a mineral claimant.

Garrard v. Silver Peak Mines, 94 Fed. 983, p. 987.

SECTION 2450, REVISED STATUTES.

The Commissioner of the General Land Office is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be settled by the Secretary of the Interior, the Attorney General, and the Commissioner, conjointly, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patents shall issue upon the same.

A. REFERENCE TO BOARD OF EQUITABLE ADJUDICATION.

1. GOOD FAITH AND SUBSTANTIAL COMPLIANCE.

2. INSUFFICIENT COMPLIANCE.

1. GOOD FAITH AND SUBSTANTIAL COMPLIANCE.

Where good faith on the part of a mineral claimant is manifest, and where the direction of the statute has not been literally followed, but there has been substantial compliance with the law, an application may be referred to the board of equitable adjudication for action.

Rowena Lode, In re, 7 L. D. 477, p. 479.

An application for patent for a mining claim may, under this section, be referred to the board of equitable adjudication to determine the equities in favor of the applicant for patent for a mining claim.

South End Min. Co., v. Tinney, 22 Nev. 19, p. 50. (dissenting opinion).

2. INSUFFICIENT COMPLIANCE.

An application for a patent for a mining claim sworn to by an agent of the applicant, where it appears from the affidavit that the applicant himself is a resident of

the land district within which the mining claim is situated, is of no effect and is not brought within the provisions of this and the following sections, as it is not a substantial compliance with the law.

Crosby and Other Lode Claims, In re, 35 L. D. 434, p. 436.

See Alaska Placer Claim, In re, 34 L. D. 40.

North Clyde Quartz Min. Claim and Mill Site, In re, 35 L. D. 455.

SECTION 2457, REVISED STATUTES.

The preceding provisions from section 2450 to section 2456, inclusive, shall be applicable to all cases of suspended entries and locations, which have arisen in the General Land Office since the 26th day of June, 1856, as well as to all cases of a similar kind which may hereafter occur, embracing as well locations under bounty-land warrants as ordinary entries or sales, including homestead entries and preemption locations or cases; where the law has been substantially complied with, and the error or informality arose from ignorance, accident, or mistake which is satisfactorily explained; and where the rights of no other claimant or preemptor are prejudiced, or where there is no adverse claim.

A. REFERENCE TO BOARD OF EQUITABLE ADJUDICATION.

See sec. 2450, p. 854.

An application for patent for a lode claim and a contiguous mill site may be confirmed by the board of equitable adjudication, though an informality appears arising from an honest mistake, where the law has been substantially complied with and there is no adverse claim.

Everest, In re, 14 C. L. O. 52.

Where the proof shows full compliance with the law except as to posting the notice on the mill-site portion of the claim, the entry may be confirmed by the board of equitable adjudication, in the absence of an adverse claim, and where such failure was the result of an honest mistake.

Everest, In re, 14 C. L. O. 151.

SECTION 2471, REVISED STATUTES.

Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged, or counterfeited; or willingly aids and assists in the false making, altering, forging, or counterfeiting any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, desino, map, expediente or part of an expediente, or title paper, or evidence of right, title, or claim to lands, mines, or minerals in California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, for the purpose of setting up or establishing against the United States any claim, right, or title to lands, mines, or minerals within the State of California, or for the purpose of enabling any person to set up or establish any such claim; and every person, who, for such purpose, utters or publishes as true and genuine any such false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, desino, map, expediente or part of an expediente, title paper, evidence of right, title, or claim to lands or mines or minerals in the State of California, or any instrument of writing

whatever in relation to lands or mines or minerals in the State of California, shall be punishable by imprisonment at hard labor not less than three years and not more than ten years, and by a fine of not more than \$10,000.

SECTION 2472, REVISED STATUTES.

Every person who makes, or causes or procures to be made, or willingly aids and assists in making any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, desino, map, expediente or part of an expediente, or any title paper, or written evidence of right, title, or claim, under Mexican authority, to any lands, mines, or minerals in the State of California, or any instrument of writing in relation to lands or mines or minerals in the State of California, having a false date, or falsely purporting to be made by any Mexican officer or authority prior to the 7th day of July, 1846, for the purpose of setting up or establishing any claim against the United States for lands or mines or minerals within the State of California, or of enabling any person to set up or establish any such claim; and every person who signs his name as governor, secretary, or other public officer acting under Mexican authority, to any instrument of writing falsely purporting to be a grant, concession, or denouncement under Mexican authority and during its existence in California, of lands, mines, or minerals, or falsely purporting to be an informer report, record, confirmation, or other proceeding on an application for a grant, concession, or denouncement under Mexican authority, during its existence in California, of lands, mines, or minerals, shall be punishable as prescribed in the preceding section.

SECTION 2473, REVISED STATUTES.

Every person who, for the purpose of setting up or establishing any claim against the United States to lands, mines, or minerals within the State of California, presents, or causes or procures to be presented, before any court, judge, commission, or commissioner, or other officer of the United States, any false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, diseño, map, expediente or part of an expediente, title paper, or written evidence of right, title, or claim to lands, minerals, or mines in the State of California, knowing the same to be false, forged, altered, or counterfeited, or any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title paper, or written evidence of right, title, or claim to lands, mines, or minerals in California, knowing the same to be falsely dated; and every person who prosecutes in any court of the United States, by appeal or otherwise, any claim against the United States for lands, mines, or minerals in California, which claim is founded upon, or evidenced by, any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title paper, or written evidence of right, title or claim, which has been forged, altered, counterfeited, or falsely dated, knowing the same to be forged, altered, counterfeited, or falsely dated, shall be punishable as prescribed in section 2471.

SECTION 2485, REVISED STATUTES.

All selections of any portion of the public domain, to which no homestead, preemption or other right had been acquired by any settler under the laws of the United States, and not being mineral land, nor reserved for naval, military or Indian purposes nor held or claimed under any valid Mexican or Spanish grant, and not included within the limits of any city, town or village or of the county of San Francisco, made prior to the 23d day of July, 1866, and theretofore sold to bona-fide purchasers by the State of California, are confirmed to the State of California: Provided, however, That said State shall not receive any greater quantity of land for school or improvement purposes than she is entitled to by law.

SECTION 5412, REVISED STATUTES.

Every person who secretly or fraudulently places, or causes to be placed, in or among the archives of the surveyor general's office in California, any expediente, book, paper, diseño, map, draught, record, or any instrument of writing purporting to be a petition, decree, order, report, concession, grant, confirmation, map, diseño, expediente or part of an expediente, denouncement, title paper, or evidence of right, title, or claim to any land, mine, or mineral, or any book, writing, paper, or document whatever, shall pay a fine of not more than \$5,000, or be imprisoned for a term not more than three years; or be both fined and imprisoned within such limits.

SECTIONS 5570-5578, REVISED STATUTES.

SEC. 5570. Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other Government, and not occupied by the citizens of any other Government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States. (Original act. Aug. 18, 1856; (11 Stat. 119.)

Annotations follow section 5578.

SEC. 5571. The discoverer shall, as soon as practicable, give notice, verified by affidavit, to the Department of State, of such discovery, occupation, and possession, describing the island, rock, or key, and the latitude and longitude thereof, as near as may be, and showing that such possession was taken in the name of the United States; and shall furnish satisfactory evidence to the State Department that such island, rock, or key was not, at the time of the discovery thereof, or of the taking possession and occupation thereof by the claimants, in the possession or occupation of any other Government or of the citizens of any other Government, before the same shall be considered as appertaining to the United States.

SEC. 5572. If the discoverer dies before perfecting proof of discovery or fully complying with the provisions of the preceding section, his widow, heir, executor, or administrator, shall be entitled to the benefits of such discovery, upon complying with the provisions of this title; but nothing herein shall be held to impair any rights of discovery or any assignment by a discoverer heretofore recognized by the United States. (Amendatory act, April 2, 1872; 17 Stat., 48.)

SEC. 5573. The discoverer, or his assigns, being citizens of the United States, may be allowed, at the pleasure of Congress, the exclusive right of occupying such island, rocks, or keys, for the purpose of obtaining guano, and of selling and delivering the same to citizens of the United States, to be used therein, and may be allowed to charge and receive for every ton thereof delivered alongside a vessel, in proper tubs, within reach of ship's tackle, a sum not exceeding \$8 per ton for the best quality, or \$4 for every ton taken while in its native place of deposit.

SEC. 5574. No guano shall be taken from any such island, rock, or key, except for the use of the citizens of the United States or of persons resident therein. The discoverer, or his widow, heir, executor, administrator, or assigns, shall enter into bond, in such penalty and with such sureties as may be required by the President, to deliver the guano to citizens of the United States, for the purpose of being used therein, and to none others, and at the price prescribed, and to provide all necessary facilities for that purpose within a time to be fixed in the bond; and any breach of the provisions thereof shall be deemed a forfeiture of all rights accruing under and by virtue of this title. This section shall, however, be suspended in relation to all persons who have complied with the provisions of this title, for five years from and after the 14th day of July, 1872.

SEC. 5575. The introduction of guano from such islands, rocks, or keys, shall be regulated as in the coasting trade between different parts of the United States, and the same laws shall govern the vessels concerned therein.

SEC. 5576. All acts done, and offenses or crimes committed, on any such island, rock, or key, by persons who may land thereon, or in the waters adjacent thereto, shall be deemed committed on the high seas, on board a merchant ship or vessel belonging to the United States; and shall be punished according to the laws of the United States relating to such ships or vessels and offenses on the high seas, which laws for the purpose aforesaid are extended over such islands, rocks, and keys.

SEC. 5577. The President is authorized, at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer or of his widow, heir, executor, administrator, or assigns.

SEC. 5578. Nothing in this title contained shall be construed as obliging the United States to retain possession of the islands, rocks, or keys, after the guano shall have been removed from the same.

A. CONSTRUCTION AND VALIDITY.

B. GUANO AS MINERAL, p. 859.

C. DISCOVERER OF GUANO—RIGHTS AND TITLE, p. 859.

A. CONSTRUCTION AND VALIDITY.

The act of August 18, 1856 (11 Stat. 119), known as the Guano Islands Act, reenacted into sections 5570-5578, of the Revised Statutes, is constitutional and valid.

Jones v. United States, 137 U. S. 202, p. 209.

Duncan v. Navassa Phosphate Co., 137 U. S. 647, p. 650.

The jurisdiction of the United States extends to the Island of Navassa and it appertains to the United States.

Jones v. United States, 137 U. S. 202, p. 218.

Duncan v. Navassa Phosphate Co., 137 U. S. 647, p. 650.

B. GUANO AS MINERAL.

In the construction of this statute guano is said to be a mineral, and lands valuable for deposits of guano are mineral lands within the meaning of the mining laws of the United States.

Richter v. Utah, 27 L. D. 95.

C. DISCOVERER OF GUANO—RIGHTS AND TITLE.

When the President determines that an island shall be considered as appertaining to the United States under section 2 of this statute he may then give the discoverer the exclusive right of occupying the island for the purpose of obtaining and selling the guano under certain conditions.

Jones v. United States, 137 U. S. 202, p. 210.

The right of a discoverer of guano under this statute is not a title as proprietor of the soil, but is merely a commercial privilege by which a discoverer is protected, and an opportunity given for shipment of the guano discovered.

Grafflin v. Navassa Phosphate Co., 35 Fed. 474.

A deposit of guano on the island of Navassa discovered by a citizen of the United States is not such an estate or interest in real estate as to entitle the widow of the discoverer a dower therein.

Duncan v. Navassa Phosphate Co., 137 U. S., 647, pp. 651, 654.

Grafflin v. Navassa Phosphate Co., 35 Fed. 474.

17 STAT. 48, APRIL 2, 1872.**ORIGINAL GUANO ACT—AMENDMENT.**

AN ACT To amend an act entitled "An act to authorize protection to be given to citizens of the United States who may discover deposits of guano," approved August 18, 1856 (11 Stat. 119; R. S. 5570, et seq.)

Be it enacted, etc., That the provisions of the act of Congress approved August 18, 1856, entitled "An act to authorize protection to be given to citizens of the United States who may discover deposits of guano," be, and the same are hereby, extended to the widow, heirs, executors, or administrators of such discoverer, where such discoverer shall have died before perfecting proof of discovery or fully complying with the provisions of said act approved as aforesaid, after complying with the requirements of the act of Congress of August 18, 1865: Provided, That nothing herein contained shall be held to impair any rights of discovery or any assignment by a discoverer heretofore recognized by the Government of the United States.

SEC. 2. That section 3 of an act approved July 28, 1866 (14 Stat. 328), entitled "An act to protect the revenue, and for other purposes," amendatory of the act aforesaid, approved August 18, 1856, be, and the same is hereby, amended by striking out the word "five," wherever the same occurs, and inserting in lieu thereof the word "ten."

SECTION 5595, REVISED STATUTES.

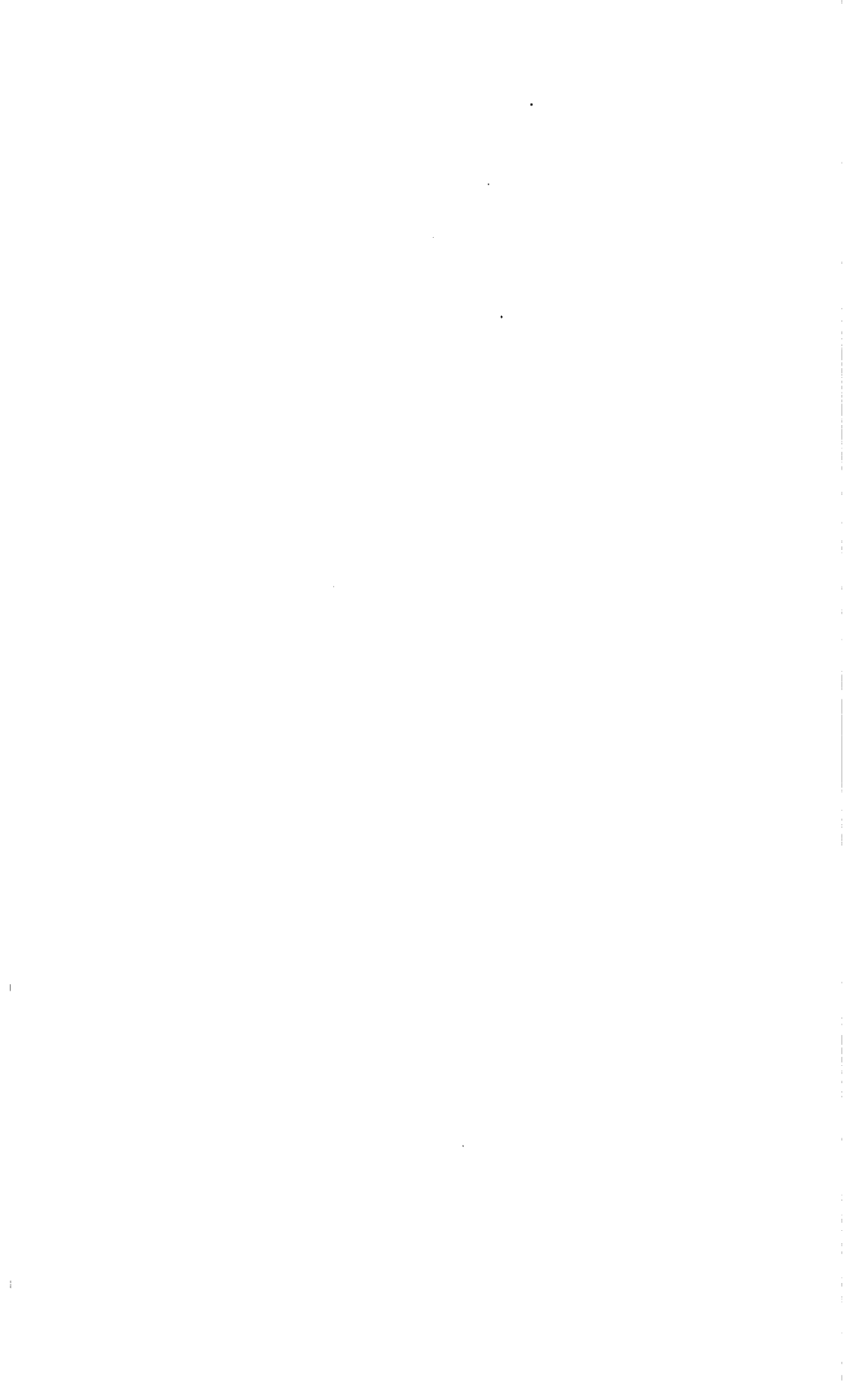
The foregoing 73 titles embrace the statutes of the United States, general and permanent in their nature, in force on the 1st day of December, 1873, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited, as the Revised Statutes of the United States.

SECTION 5596, REVISED STATUTES.

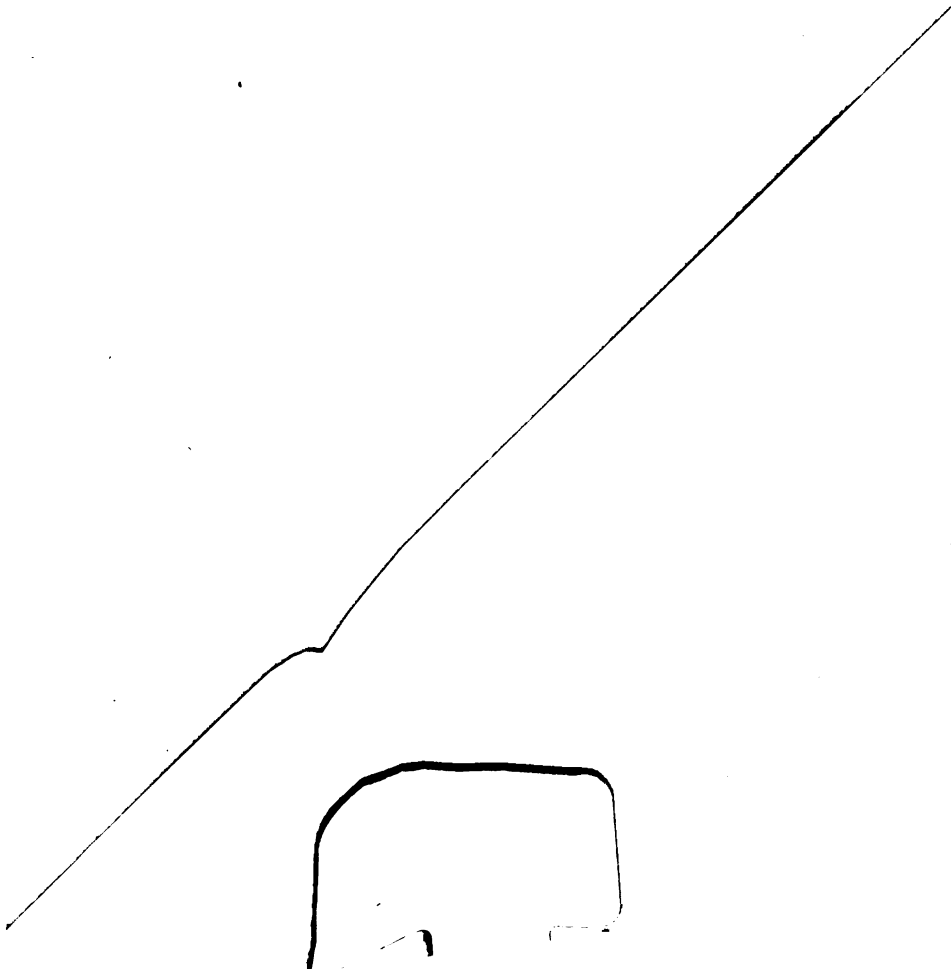
All acts of Congress passed prior to said 1st day of December, 1873, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general or permanent in their nature: Provided, That the incorporation in the said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local or temporary character contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day no part of which are embraced in said revision, shall not be affected or changed by its enactment.

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